INDEX TO APPENDIX.

	PAGE
Docket Entries in the District Court	1
Docket Entries in the Court of Appeals	8
Complaint	13
Answer	16
Transcript of Proceedings, July 10, 1969	17

Defendant's Case:

	Direct Exam.	Cross Exam.	Re-direct Exam.	
Seth J. McKibbin	18	29		
Edward W. Noble	32			
John D. Barker		33		
Amended Answer				144
July 10, 1970, Opinion of the District Court				145
Transcript of Proceedings, May 10, 1971				167

Plaintiff's Case:

Seth J. McKibbin	168		169	
August 3, 1971, Opinion of the District Court				180
Judgment of the District Court				191
Opinion of the Court of Appeals				195
Judgment of the Court of Appeals				216
Order Allowing Certiorari				217

EXHIBITS.

Plaintiff's Exhibits:

Exhibit 1—Defendant's Answers to Plaintiff's Interrogatories, Set No. 1. 35

Exhibit 4—Defendant's Answers to Plaintiff's Interrogatories, Set No. 1. [Exhibit D, Responsive to Interrogatory No. 12] 48

PAGE

Exhibit 6—Defendant's Answers to Plaintiff's Interrogatories, Set No. 2, to the Extent Not Subject to Objections Now Pending 50
Exhibit 13—Exhibit I to Defendant's Answers to Plaintiff's Interrogatories, Set No. 2. [Responsive to Interrogatory No. V] 54
Exhibit 27—Defendant's Supplemental Answers to Plaintiff's Interrogatories, Set No. 2 56
Exhibit 30—Hourly Group Number Conversion Table 57
Exhibit 32—Conversion Schedule 58
Exhibit 33—Deposition of Edward W. Noble [November 6, 1968] 59
Exhibit 34—Evaluation Manual 68
Exhibit 36—Hourly Job Evaluation, Job No. 80-1353 .. 72
Exhibit 37—Hourly Job Evaluation, Job No. 80-4658 .. 76
Exhibit 38—Hourly Job Evaluation, Job No. 12-1354 .. 80
Exhibit 39—Hourly Job Evaluation, Job No. 4650 84
Exhibit 40—Hourly Job Evaluation, Job No. 95-4672 88
Exhibit 42—A Manual for Occupational Evaluation .. 93
Exhibit 47—Document *re:* Katherine Kessler 101
Exhibit 48—Document *re:* Helen M. Callanan 102
Exhibit 49—Document *re:* Hattie Strong 103
Exhibit 52—Document *re:* Carl D. Barney 104
Exhibit 53—Document *re:* James T. Thompson 105
Exhibit 58—Deposition of Seth J. McKibbin [November 7, 1968] 106
Exhibit 68-A—Female Schedule for Deriving Rate Ranges and Steps 123
Exhibit 68-B—Male Schedule for Deriving Rate Ranges and Steps 124
Exhibit 69—Revised Hourly Rate Schedule 125

PAGE

Exhibit 76-20—Agreement between Corning Glass Works and the American Flint Glass Workers' Union of North America, A.F.L.-C.I.O., Including Local Union No. 1000, January 9, 1964 127

Exhibit 82—Letter, dated May 4, 1964, from Charles A. Francik, to Messrs. Bradshaw, Dorwart, Gillen, Hall, Lang, Rhodes, Somers and Yeakey 128

Exhibit 91—Deposition of Arthur J. Agett [November 7, 1968] 131

Exhibit 93—Deposition of Earle Lewis [November 7, 1968] 133

Exhibit 97—Industry Wage Survey 140

Exhibit 101—Defendant's Answers to Plaintiff's Revised Requests for Admissions and Third Set of Interrogatories 173

Exhibit 101-A—Defendant Corning Glass Works' Response to Plaintiff's Requests for Admissions and Third Set of Interrogatories 176

Exhibit B—CGW Job Evaluation Installation Rules 177

Exhibit C—Job Evaluation Questions and Answers. 178

Exhibit A—Shift Differential 176

DOCKET ENTRIES IN THE DISTRICT COURT.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

CORNING GLASS WORKS, a Corporation,

Defendant.

Civil Action No. 1967-29

Docket Entries

Date		
1967		
Jan.	20	Filed Complaint.
	20	Issued summons & copy.
	20	JS 5 made.
Feb.	1	Filed summons-served 1/27/67.
	17	Filed Deft's. Answer.
	17	Filed Deft's Interrogatories, Set No. 1.
Mar.	6	Filed Pltf's. Answers to Deft's Interrogatories, Set No. 1.
	13	Filed Pltf's. Interrogatories to Deft., Set. No. 1.
	29	Filed Stipulation extending deft's. time to answer interrogatories, Set No. 1, to 5/1/67.

Docket Entries in the District Court.

Date		
1967		
May	5	Filed Deft's. Answers to Pltf's. Interrogatories, Set. No. 1.
Dec.	22	Filed Pltf's. Interrogatories to Deft., Set No. 2.
1968		
Feb.	5	Filed Deft's. Motion to Extend Time to Answer Pltf's. Interrogatories to Deft., Set No. 2.
	5	Filed Deft's. Objections to Pltf's. Interrogatories to Deft., Set No. 2.
	12	Filed Deft's. Notice of Motion for an extension of time to answer pltf's. interrogatories, set No. 2, and deft's. objections to pltf's. interrogatories, Set No. 2—ret. 3/11/68—adj. gen.
Mar.	26	Filed Order & Motion for Enlargement of Time to File Objections to Pltf's. Interrogatories to Deft., Set No. 2—Henderson, J. (notice & copy to Mr. Hughes.)
Apr.	1	Filed Stipulation *re* Deft's. Objections to Pltf's. Interrogatories to Deft., Set No. 2 (proposed).
	15	Filed Stipulation *re* Deft's. Objections to Pltf's. Interrogatories to Deft., Set No. 2.
Aug.	20	Filed Deft's. Answers to Pltf's. Interrogatories, Set No. 2, to the extent not subject to objections now pending.
Sept.	4	Filed Decision & Order that deft's. objections to interrogatories are overruled and deft. will answer within 30 days—Henderson, J. (notice & copy to Messrs. Hughes & Olena.)

Docket Entries in the District Court.

Date		
1968		
Oct.	4	Filed Deft's. Supplemental Answers to Pltf's. Interrogatories, Set No. 2.
	18	Filed Pltf's. Note of Issue—Nov. 1968 Term.
Nov.	8	Filed Pltf's. Notice of Oral Depositions.
1969		
Feb.	4	Filed Order for Substitution of Party Plaintiff—Curtin, J. (notice & copy to Mr. Olena.)
Apr.	14	Pretrial Conference (JTC).
May	1	Filed Depositions of F. Phillip Hunt, Charles B. Wilson, Bernard J. Cushing, Thomas Tuthill, Donald A. McCabe, Earle Lewis, Arthur J. Agett, Bernard Shinners, Seth McKibbin and Edward W. Noble (notice to attys).
	14	Filed Deft's. Amended Answers to Pltf's. Interrogatories Set No. 1: Interrogatories Nos. 6 & 7.
	29	Filed Pltf's. Interrogatories to Deft.
June	26	Filed Deft's. Motion for Protective Order—ret.
July	8	Trial before Judge Curtin.
	9	Filed Court Reporter's Transcript of Proceedings held 7/8/69 (Vol. I).
	9	Trial Contd.
	10	Trial Contd.

Docket Entries in the District Court.

Date		
1969		
July	11	Filed Court Reporter's Transcript of Proceedings (Vol. 2, 3 & Index).
	15	Trial Contd.—Submitted.
	18	Filed Court Reporter's Transcript of Proceedings (Vol. IV).
1970		
July	10	Filed Deft's. Motion to Amend Answer to Conform to the Evidence.
	10	Filed Deft's. Amended Answer.
	10	Filed Decision & Order that the deft. is restrained from withholding the payment of wages due for the period from 11/1/64 to 11/68, etc.—Curtin, J. (notice & copy to Mr. LaRuffa and Reed, Smith, Shaw, etc.)
	20	Filed Pltf's. Motion to Amend and Make Additional Findings and Grant Further Injunctive Relief—Hearing 9/18/70—adj. 11/10.
Sept.	18	Filed Affidavits—Victor Foinsbee, Norma Hartwell and John Bloise.
	28	Filed Pltf's. Request.
Oct.	5	Filed Court Reporter's Transcript of Proceedings of 9/18/70.
	21	Filed Deft's. Motion to bring in additional defendants—ret. 11/13/70—D.

Docket Entries in the District Court.

Date	
1970	
Oct. 26	Filed Pltf's. Notice of Motion for an Order compelling Deft., to respond to request for admissions, etc.—ret. 11/13/70—Deft. must answer or object to interrogatories by 12/11/70. Arguments on objections to be heard on 12/18/70—Pltf. to answer by 12/24/70. Deft. to answer by 1/29/71.
Nov. 30	Filed Deft's. Request for Admissions & Second Set of Interrogatories.
Dec. 2	Filed Order denying Pltf's. Motion to amend Order of 7/10/70 and denying Deft's. Motion to bring in additional defendants, etc.—Curtin, J. (Notice & copy to Messrs. LaRuffa, Olena & Reed, Smith).
Dec. 3	Filed Deft's Request for Admissions & Second Set of Interrogatories.
9	Filed Court Reporter's Transcript of Proceedings of 11/13/70.
14	Filed Pltf's. Answers to Deft's. Request for Admissions & Second Set of Interrogatories.
14	Filed Deft., Corning Glass Works' Response to Pltf's. Requests for Admissions & Third Set of Interrogatories.
28	Filed Pltf's. Revised Requests for Admissions & Third Set of Interrogatories.
28	Filed Pltf's. Revised Answers to Deft's. Request For Admissions & Second Set of Interrogatories.

Docket Entries in the District Court.

Date		
1971		
Jan.	26	Filed Court Reporter's Transcript of Proceedings of 12/18/70.
Feb.	1	Filed Deft's. Answers to Pltf's. revised requests for admissions & Third Set of Interrogatories.
May	10	Motion by Pltf., to amend court's finding & for further injunctive relief—attys. to file proposed findings of fact & conclusions of law by 7/10/71.
	19	Filed Pltf's. Notice of Motion for an order permitting the addition of certain Exhibits—ret. 5/26/71.
	21	Filed Court Reporter's Transcript of Proceedings of 5/10/71.
Aug.	3	Filed Decision & Order restraining Deft., from withholding payment of wages due Deft's., employees under the Fair Labor Standards Act; granting Pltf's., application for an injunction and enjoining the Deft., from future violations of the Act and fixing interest rate of 6% on amounts withheld, etc.—Curtin, J. (notice & copy to Messrs. LaRuffa, Olena and Reed, Smith, etc. and Isabelle Cappello).
Oct.	1	JS 6 made.
	1	Filed Deft's. Notice of Appeal (copy mailed to Mr. LaRuffa).
	29	Filed Motion for extension of time for transmission of record on appeal and Order extending time to 12/9/71—Curtin, J. (notice & copy to Mr. LaRuffa).

Docket Entries in the District Court.

Date		
1971		
Nov.	15	Filed Pltf's. Notice of Settlement—ret. 11/19/71 adj. generally.
	15	Filed Pltf's. Affidavit of Service of Notice of Settlement.
	30	Filed Judgment—Curtin, J. (notice & copy to Mr. Olena).
	30	Filed Motion and Order for Stay of Judgment—Curtin, J. (notice & copy to Mr. LaRuffa).
	30	Filed Affidavit *re* annual report of Corning Glass Works.
	30	Filed Exhibit "A" to Judgment—Deft's. Liability Computation 11/1/64 thru 6/27/71.
Dec.	15	Filed copy of order of U. S. Court of Appeals extending time to file record and docket appeal to 3/13/72.
1972		
Jan.	26	Filed Deft's. Notice of Appeal (copy mailed to Mr. LaRuffa and to Clerk, CCA with copy of docket entries).
	26	Filed Bond for $500 costs on appeal in form of letter transmitting checks.

DOCKET ENTRIES IN THE COURT OF APPEALS.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

APPEAL FROM WESTERN DISTRICT OF NEW YORK

Case No. 72-1229

Title of Case:

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,
Plaintiff-Appellee,

v.

CORNING GLASS WORKS, a Corporation,
Defendant-Appellant.

(& in 72-1230)

TRANSFERRED FROM MR 5003 Calendar No. 252

Attorneys for Appellee:
Francis V. LaRuffa
Regional Solicitor
U. S. Dept. of Labor
341 Ninth Avenue
New York, N. Y. 10001

Docket Entries in the Court of Appeals.

Attorneys for Appellant:
(from order dated 8/3/71)
Harry H. Weil
Scott F. Zimmerman
Walter P. DeForest
Reed, Smith, Shaw & McClay
747 Union Trust Building
Pittsburgh, Pa. 15230
(412 288-3131)

No. Below: Civ-1967-29

Judge Below: J. T. Curtin

Date of Decision & Order: 8/3/71

Notice of Appeal Filed: 10/1/71

Docket Entries

Date	
12– 3–71	Filed motion for extension of time to transmit record and docket appeal with proof of service.
12– 8–71	Filed order granting motion for extension of time to file record and docket appeal to 3-13-72.
1–31–72	Filed copies of docket entries and notice of appeal.
3– 3–72	Received docket fee (from order dated 8-3-71).

Docket Entries in the Court of Appeals.

Date	
3– 3–72	Received docket fee (from judgment entered 11-30-71) (& in 72-1230).
3– 8–72	Filed order consolidating appeals and extending time to transmit and docket the record by 3-13-72 (& in 72-1230).
3–10–72	Filed partial record (original papers of district court).
3–27–72	Filed stipulation *re:* deferred appendix (& in 72-1230).
4–12–72	Filed motion for extension of time to file appellant's brief and designation of contents of appendix (& in 72-1230).
4–13–72	Filed order granting motion for extension of time to file appellant's brief and designation of contents of appendix to 4-28-72.
5– 1–72	Filed brief, appellant with proof of service (& in 72-1230)—by mail.
5–22–72	Filed motion for extension of time to file appellee's brief with proof of service (& in 72-1230).
5–23–72	Filed order granting motion for extension of time to file appellee's brief to 6-30-72 (& in 72-1230).
7– 3–72	Filed motion for extension of time to file appellee's brief with proof of service.
7– 5–72	Filed order extending time to file appellee's brief to 7-10-72.

Docket Entries in the Court of Appeals.

Date	
7–12–72	Filed motion for extension of time to file appellee's brief with proof of service (& in 72-1230).
7–14–72	Filed order granting motion to extend time to file appellee's brief to 7-17-72 (& in 72-1230).
7–20–72	Filed motion for extension of time to file appellee's brief with proof of service.
7–21–72	Filed order granting motion to extend time to file appellee's brief to 7-21-72.
7–25–72	Filed order granting leave to file page proof copies appellee's brief.
7–25–72	Filed 4 copies page proof brief, appellee (& in 72-1230).
8– 2–72	Filed motion for extension of time to file appellant's reply brief and joint appendix with proof of service.
8– 3–72	Filed order granting motion to extend time to file appellant's reply brief and joint appendix to 8-14-72.
8– 9–72	Filed motion for extension of time to file appellant's reply brief and joint appendix with proof of service.
8–11–72	Filed order granting motion for extension of time to file appellant's brief and joint appendix to 8-28-72.
8–31–72	Filed brief, appellant (by mail).
8–31–72	Filed reply brief, appellant (by mail).

Docket Entries in the Court of Appeals.

Date	
8–31–72	Filed joint appendix, with proof of service (by mail).
9–12–72	Filed brief, appellee with proof of service.
1– 4–73	Argument heard (by: Friendly, Ch. J., Kaufman, C. J. and Holden, D. J.) (& in 72-1230).
2– 2–73	Judgment Modified and Affirmed, Friendly, Ch. J. (& in 72-1230).
2– 2–73	Filed judgment (& in 72-1230).
2–21–73	Filed motion to stay the issuance of the mandate pursuant to 41 (b) with p/s.
3– 5–73	Filed order granting motion to stay issuance of the mandate pursuant to 41(b); no bond is required (& in 72-1230).
4–20–73	Certified original record and proceedings for: Reed, Smith, Shaw & McClay.
4–20–73	Filed notice by Supreme Court extending time to file a writ of certiorari to 7-2-73.
4–26–73	Filed motion to further stay the issuance of the mandate with p/s.
5– 2–73	Filed order granting motion to further stay the issuance of the mandate to 7-2-73 (& in 72-1230).
7– 2–73	Filed notice of filing of petition for writ of certiorari (& in 72-1230) (S. C. No. 73-29).
7–20–73	Filed receipt by Supreme Court of original record.
12–26–73	Filed certified copy of order of Supreme Court granting petition for writ of certiorari (& in 72-1230).

COMPLAINT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

CORNING GLASS WORKS, a Corporation,
Defendant.

Civil Action No. 1967-29.

Plaintiff brings this action to enjoin defendant from violating the provisions of Sections 15(a) (1) and 15(a) (2) of the Fair Labor Standards Act of 1938, as amended, [52 Stat. 1060; 29 U. S. C. 201-219], hereinafter called the Act, and to restrain any withholding of payment of wages found by the Court to be due to employees under the Act.

I.

Jurisdiction of this action is conferred upon this Court by Section 17 of the Act.

II.

Defendant, CORNING GLASS WORKS, is and at all times hereinafter mentioned was a New York corporation having an office and place of business at Corning, Steuben County, State of New York, within the jurisdiction of this Court, and is and at all times hereinafter mentioned was engaged in the manufacture and distribution of glassware.

III.

At all times hereinafter mentioned defendant employed, and it is employing, many employees in and about its aforesaid place of business in the manufacture and distribution of diverse types of glasses and glassware. Substantial quantities of the goods produced by these employees have been and are being produced for commerce within the meaning of the Act, and have been and are being transported, offered for transportation, shipped, delivered, and sold in commerce from defendant's aforesaid place of business to other states.

IV.

Defendant, an employer having employees subject to the provisions of Section 6 of the Act, as aforesaid, has repeatedly violated, and it is violating, the provisions of Sections 6(d) and 15(a)(2) of the Act by discriminating, within its aforesaid establishment in which such employees have been and are employed, between employees on the basis of sex by paying wages to employees in such establishment at rates less than the rates at which it pays wages to employees of the opposite sex in such establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

V.

Defendant has repeatedly violated, and it is violating, the provisions of Section 15(a)(1) of the Act in that it has transported, offered for transportation, shipped, delivered, and sold in interstate commerce, from its aforesaid place of business to other states, goods in the production of which many of its employees were employed in violation of Section 6 of the Act, as alleged.

VI.

Since on or about June 11, 1964 defendant has repeatedly violated, and it is violating, the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is expressly authorized by Section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays judgment permanently enjoining defendant, its officers, agents, servants, employees and those persons in active concert or participation with them from violating the provisions of Sections 15(a)(1) and 15(a)(2) of the Act, and for such other and further relief as may be necessary and appropriate, including the restraint of any withholding of payment of wages found by the Court to be due to employees under the Act.

CHARLES DONAHUE,
Solicitor,

JOHN A. HUGHES,
Regional Attorney,

FRANCIS V. LaRUFFA,
Supervising Attorney,

United States Department of Labor,

Attorneys for Plaintiff.

Post Office Address:
John A. Hughes,
Regional Attorney,
U. S. Dept. of Labor,
341 Ninth Avenue,
New York, N. Y. 10001.

[Filed, January 20, 1967]

ANSWER.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Defendant, Corning Glass Works, files the following Answer to the Complaint in the above-captioned case:

1. The averments of Paragraphs I, II and III of the Complaint are admitted.

2. The averments of Paragraphs IV, V and VI of the Complaint are denied.

WHEREFORE, Defendant prays that the Complaint be dismissed.

/s/ .....,
ARNOLD T. OLENA,

/s/ .....,
HODGSON, RUSS, ANDREWS,
WOODS & GOODYEAR,
800 M & T Building,
Buffalo, New York.

/s/ .....,
JOHN G. WAYMAN,

/s/ .....,
LEONARD L. SCHEINHOLTZ,

/s/ .....,
REED, SMITH, SHAW & McCLAY,
747 Union Trust Building,
Pittsburgh, Pennsylvania,

Counsel for Defendant,
Corning Glass Works.

[Filed, February 17, 1967]

[389] **TRANSCRIPT OF PROCEEDINGS, JULY 10, 1969.**

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Proceedings of trial held before the Hon. John T. Curtin, United States District Court Judge, at the United States Court House, Buffalo, New York, resuming on July 10, 1969.

Appearances:

Francis V. LaRuffa, Chief Trial Attorney, and Mrs. Isabelle R. Cappello, Deputy Counsel for Regional Litigation, Attorneys for the Plaintiff.

Reed, Smith, Shaw & McClay, Attorneys for the Defendant; John G. Wayman, Esq., and Scott F. Zimmerman, Esq., of Counsel.

• • •

[400] The Court: Let us leave that as it is. All right. What do we have? Do we have any testimony today or any other offers?

Mrs. Cappello: Your Honor, the Government has reviewed its case and we believe we have established what we set out to prove and anything further would be cumulative and therefore we plan to rest and do rest.

• • •

[404] Mr. Wayman: If it please the Court, I have decided that I do not wish to make any motions at this time. I would prefer to go ahead with my witnesses.

• • •

[405] SETH J. McKIBBIN (137 Davis Street, Painted Post, New York), being duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination by Mr. Wayman:

* * *

[410] Mr. Wayman: Yes, sir.

The Court: You said,—maybe this is explained somewhere else,—"steady third shift rate". What do you mean by a steady third shift rate?

Mr. Wayman: For Inspectors.

The Court: What do you mean by that?

The Witness: We have had a past practice, your Honor, of paying Inspectors on the night shift a different rate than we have paid the day shift Inspectors, and it was originated back in the 1927 to 1930 era.

The Court: All right. Go ahead, Mr. Wayman.

By Mr. Wayman:

Q. Has that steady third shift rate ever been paid except to employees on the steady third shift? A. No, sir, not to the best of my knowledge.

The Court: Now,—go ahead, Mr. Wayman. Perhaps right now, your prior question had to do only with inspection jobs. Now you talk about all jobs.

Mr. Wayman: I am speaking only of the inspection jobs, your Honor. May I amend the question, your Honor?

The Court: All right.

By Mr. Wayman:

[411] Q. Has that steady third shift rate for Inspectors ever been paid to any employees except employees who work on the steady third shift? A. That is the question I answered before. Yes, I understood it was inspection.

Q. Did you search the records to see whether or not it has? A. Yes.

Q. And your finding was it had not been paid to anybody except those employees? A. That is right.

Q. Whether they were men or whether they were women? A. This applicable rate was paid to men or women who worked the night shift.

Q. Now, do I understand correctly that there is a change in that as a result of recent contract negotiations? A. Yes, sir, that is correct.

Q. What was the change? A. Part of our recent negotiations which were consummated in January of 1969, the Union and Management groups agreed to install a new job evaluation program in the Corning area, and as a result of that we currently have the one job for inspection for the new people that we may hire after January 20, 1969.

• • •

[414] Q. What, if anything, happened on June 1, 1966, that changed that? A. On June 1st, 1966, as a result of an agreement between the union and the management groups, we consolidated our seniority lists and thereafter applied employee rights to jobs in accordance with one seniority list.

Q. Did that mean that women could take jobs, if they had the seniority on the steady third shift? A. They could, very well.

Q. Did any of them do it? A. Yes, they did in fact.

Q. When they worked on the steady third shift, did they receive the same rate that the men received on this steady third shift? A. They did, sir.

Q. Did any men work on the first and second shifts? A. They did.

Q. What rate did they receive? A. The same rate that the women working the day and afternoon shifts received.

Q. I'm going to ask you to look at Plaintiff's Exhibit 12, which has been entered in the record, and ask you whether or not, looking at that exhibit and the [415] information contained therein, you can tell us the earliest date on which any employee having seniority, would have been able to take a job on the steady third shift as an inspector? Can you do that by looking at that exhibit? A. Yes, if I may stand.

The Court: Surely.

The Witness: May I use a particular plant as a specimen, for example "A" Factory?

The Court: Yes, sir.

Mr. Wayman: May we go off the record a moment, your Honor.

The Court: If you desire.

(Whereupon, an off-the-record discussion ensued.)

The Court: For the convenience of the witness, we have permitted him to use a copy of Exhibit 12, which he had marked some notes in as an aid to his testimony. Plaintiff's counsel have an opportunity to look at these if she desires on cross examination.

The Witness: By analyzing the information that is in this particular exhibit, and I happen to be looking at "A" Factory—

[416] The Court: Is there a page or some other reference to this, Mr. McKibbin?

The Witness: I am afraid the pages are not numbered correctly, so that you can go from one copy to another.

The Court: Is there some way you can refer to that page?

The Witness: Yes.

By Mr. Wayman:

Q. Can you give us the name and number of the person to whom you are referring? A. If you look at the information on women in "A" Factory, on job code 4570 as a for instance, this is one of the inspection job codes identified in the exhibit introduction.

Q. Is that night inspection? A. That is a night inspection occupation, yes. And, the week of June 1, the week which included June 1, 1966, in this, nomenclature, was the 23rd week of 1966, and we find that we had women with relatively junior service dates going on there as early as the 42nd week of 1966.

Q. What would be the 42nd week, what month? A. That would be about October or November. I have a conversion schedule, but it's not with me. We had two employees with 1966 service dates. These people [417] were specifically hired May 18, 1966. That is their service date listed on this exhibit.

The Court: Does it give the name?

The Witness: Yes, sir. Their names are C. V. Furney, employee No. 32756. The second employee

listed on this exhibit is W. H. Stewart, employee No. 87375.

By Mr. Wayman:

Q. You say their service dates were May 18, 1966? A. That is correct.

Q. That means they were hired then? A. Yes. That is when they started employment.

Q. They took the night inspection job 4570? A. That's right.

Q. In the 42nd week? A. That's right.

Q. Now, what significance does that have as to anybody that had a service date earlier than May 18, 1966? A. In accordance with our seniority rules that are in effect, any employee who had wanted to go on the night inspection job, could have transferred ahead of this new employee going on that job, by exercise of his or her seniority subsequent to the June 1, 1966 date.

Q. All right. Have you any other examples such as Furney and Stewart? [418] A. Yes, I do find the same thing in Pressware.

Q. All right. Would you do that please? A. I have identified R. J. Jellison, employee No. 47911, who went on the job code 4551, which was a TV inspector nights, on the 23rd week of the year, 1966, which would be the week which included June 1, of that year and at that time, according to the exhibit, his service date was May 9, 1966, and I would draw the same conclusion that any employee wishing to go on nights, could have done so.

Mr. LaRuffa: I move that that be stricken, your Honor. Any conclusion that can be drawn from that would be drawn by the Court.

The Court: All right, overruled. I will permit his answer.

[419] By Mr. Wayman:

Q. Go ahead, Mr. McKibbin. A. I would conclude from this information that any employee whose service date was prior to 5/9/66, could very well have taken a job if he or she exercised his rights under the contract.

Q. His seniority rights you speak of? A. Yes.

The Court: Is this individual Jellison, is that a lady or a man?

The Witness: That is a man, your Honor.

The Court: The prior one you told us about was a woman?

The Witness: Right. I could find a woman under similar circumstances. I have not taken time to. I just spotted a couple before I came in.

The Court: How do you tell the difference between men and women?

The Witness: In the right-hand column there is a column called "Sex" and there is an "M" or an "N".

By Mr. Wayman:

Q. So that by reference to this exhibit without going through the whole thing and picking out all of them, we find somebody that was hired on to the [420] night inspection job, we know anybody having seniority as of that date could have taken the job if they desired? A. Yes.

Mr. LaRuffa: I object to the leading. After all, Mr. McKibbin is Mr. Wayman's witness and he is not on cross examination.

The Court: I realize it is leading, Mr. LaRuffa, but I will overrule the objection. It is difficult to testify from these documents. Overruled.

• • •

[421] By Mr. Wayman:

Q. Can you tell us some shift differentials which you found in your research in this part of New York State that might be as high or higher than the differential paid the night shift rate inspection and the day shift rate?

[422] Mrs. Cappello: Your Honor, we object unless it is confined to the glass industry.

The Court: I will listen to it. As far as materiality and relevancy, we will determine that after listening to the testimony.

Mr. Wayman: It might well go to the weight. My own argument has been what somebody else pays is irrelevant, but we have heard others and I would like Mr. McKibbin to give us the result of his study. Can you answer that?

The Court: If we are in the Corning or Elmira area and there is other industry other than glass there, an individual can hire out to other,—let's say machine shops or other industry, wouldn't that have some bearing upon what the night shift differential would be?

Mrs. Cappello: We know, your Honor, the circumstances of why they were on three shifts in the glass industry. They have Lehrs continually turning out glass. We would have to know the circumstances why they are running a third shift.

The Court: Each business is different. Go ahead.

[423] The Witness: As I understand the question, my answer would be, yes, I have researched the shift differential paid steady night shifts in our Western New York area generally, and I can cite several in the immediate vicinity. We have General Electric and Westinghouse plants who are competitors in our labor market area.

By Mr. Wayman:

Q. Where are they located? A. Westinghouse is in Horseheads which is 12 to 14 miles. I am not specific, but it is of that magnitude, to our east. They also have a plant in Bath, some 20 miles away. In their Horseheads plant their contract calls for a 10 per cent shift differential.

The Court: This is Westinghouse?

The Witness: Yes, your Honor.

The Court: At Horseheads?

The Witness: Yes.

The Court: Could you tell us generally about how many employees there are, what they make there and so on?

The Witness: They process glass tubes, glass envelopes, and they make glass, specialty [424] glass tubes for radar and X-ray and this type thing. I am not intimately familiar with their product line.

The Court: Just generally speaking?

The Witness: Generally speaking.

The Court: All right.

By Mr. Wayman:

Q. Do you have any idea of the approximate number of employees? A. I believe it is around 900.

Q. I think you mentioned General Electric? A. General Electric has a foundry in Elmira City which is 15 to 18 miles, something like that. It is a couple miles beyond, the Westinghouse plant. They likewise pay a 10 per cent steady night shift differential in that plant. It is a foundry and I am not sure what product they make beyond that.

Q. The approximate number of employees, if you can remember? A. I believe it is around 750.

Q. Have you checked any other large employers in Western New York?

Mr. LaRuffa: If your Honor please, is it your Honor's decision to permit the witness to answer as to any industry in this area?

The Court: Just a minute, Mr. LaRuffa. Let's [425] take them one at a time. When you say "Western New York"—

Mr. Wayman: We will give the location.

The Court: Let's give the location so we can have definite objections and rulings.

The Witness: I have knowledge of three or four other companies in the Western New York area. Xerox in Rochester has a contract that calls for a shift differential on the night shift of 50 cents.

By Mr. Wayman:

Q. You say "a contract". Do you mean a Union Contract? A. Yes.

Mr. LaRuffa: I object, your Honor.

The Court: You object to Xerox in Rochester?

Mr. LaRuffa: I am, because if we are now dealing with the glass industry—

The Court: We are not, certainly not,—different factors. How far is Rochester from Corning?

The Witness: 85 to 90 miles.

The Court: Then—

Mr. LaRuffa: We have different factors, if your Honor will hear them.

The Court: I think, Mr. Wayman, what I will do here, Mr. Wayman, I will defer ruling [426] on this. We have Mr. McKibbin here. He has made the study and we presume he has made it accurately. I will defer ruling on this. My present thought is we are getting far afield. If you can convince me later on I should consider, I will.

Mr. Wayman: I would like to offer the evidence and we can argue about the weight and materiality.

Mr. LaRuffa: Your Honor, I want to indicate this—

The Court: You continue to object, Mr. LaRuffa, as we go on and we will rule on it later on.

Mr. LaRuffa: I merely want to bring—

The Court: Mr. McKibbin is here.

Mr. LaRuffa: I merely want to bring to the Court's attention when we are speaking of Rochester we have a different labor situation in Rochester.

The Court: I realize that. That is a matter of argument I will listen to. I appreciate all those things, but you object as we go on so we have a record. Xerox you object to. I will defer on that.

By Mr. Wayman:

[427] Q. Any others? A. I have two others, Kodak in Rochester pays 12½ percent, but not less than 30 cents.

Mr. LaRuffa: I object.

The Court: All right, deferred. That would be in all the Kodak plants?

The Witness: In Rochester, New York, yes, sir.

The Court: Twelve and one half?

The Witness: It is the formula paid shift differential on the late night shift is 12½ percent, but not less than 30 cents.

The Court: All right.

By Mr. Wayman:

Q. All right. Any others? A. One other is IBM down in Owego, New York, has an establishment there, and their shift differential on the late night shift is 14 percent.

Mr. LaRuffa: Same objection.

The Court: Deferred. Mr. McKibbin, your study was made this year?

The Witness: Yes.

The Court: As of now?

The Witness: Yes, your Honor.

[428] The Court: Now, do you know, did you make any study as to whether these men's jobs, or ladies' jobs, or did you make a study in that regard?

The Witness: I did not inquire into the sex of the employees that worked there, your Honor.

The Court: Fine.

Mr. Wayman: I am sure that everybody in this room, perhaps except as to Mr. Zimmerman and myself, knows where Owego is. I don't know. Could you tell us how far that is from Corning?

The Court: I don't know, but I think we should hear it from Mr. McKibbin.

The Witness: I would estimate it's approximately fifty miles east of Corning.

By Mr. Wayman:

Q. Do they also have a plant in Binghamton? A. In Endicott. They have plants in the Southern Tier of New York State, in that general vicinity, but—

The Court: How far is Binghamton from Corning?

The Witness: Eighty-five miles.

The Court: And Endicott?

The Witness: Eighty miles.

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[429] SETH J. McKIBBIN, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination by Mr. LaRuffa:

• • •

[431] Q. Did you, in any way, study any of the publications of the Bureau of Labor Statistics, and more specifically with respect to a bulletin that was issued in December of 1964? A. I did.

Q. And that related to what years? A. My recollection, that it was published in May of 1964, and the date of the data therein was 1963.

Q. I show you Plaintiff's Exhibit No. 97, marked for identification, and ask you whether or not this is one of the publications that you reviewed? A. I believe this another copy of the same study, yes.

Q. You did study this one? A. Yes.

• • •

[432] Q. Mr. McKibbin, I show you Government's Exhibit 97 in evidence and can you,—and I call specific attention to page 26 and ask you, do you recall [433] studying those schedules dealing with night shift differentials? A. Yes, I looked at them.

Q. Will you indicate to the Court where in that publication does it appear that any firm receives as much as the amount that you indicated on your direct testimony? A. I indicated several amounts in my direct testimony. I am not sure which one you refer to.

Q. Were any of those amounts obtained from information in this schedule? A. They were not. All of the information that I cited was current information and as best I can recall, this is 1963 information.

• • •

[435] Q. But in Corning, New York, the night shift differential to Inspectors is only paid to Inspectors, is it not? A. Currently.

Q. Is it paid to any other employees? A. Not currently.

Q. I mean now, Mr. McKibbin, not the night shift differential but the differential in basic rate. Is that paid to any other employees working that third shift? A. That is the question I understood and currently we have no other employees that are similarly situated.

Q. Other than Inspectors? A. That is right.

The Court: Now, you are talking about at the present time, Mr. McKibbin?

The Witness: Yes, your Honor.

By Mr. LaRuffa:

Q. It was at all times, was it not, since time immemorial, was it not? A. No, I think in our research for you and in

your [436] presence in Corning I believe I pointed out that there had been other job classifications that were similarly situated where there was a steady night shift differential between—there was a differential between the steady night shift and the day shift, day and afternoon shifts.

Q. In the basic rate? A. In the basic rate.

• • •

[438] By Mr. LaRuffa:

Q. Is this what you referred to in your language "a supplemental night shift differential escalating night shift differential?" A. I am not sure of the precise language but yes, we tried to describe the fact as best we could.

Q. Did you invent that language? A. No, sir.

Q. Who did? A. An associate of mine at Corning Glass Works.

Q. Have you ever heard of that language or that phraseology in industry as such? A. No, sir.

• • •

[443] By Mr. LaRuffa:

Q. And also for your same question outside of New York, outside of Corning, New York, is there any branch plant where the same job classification or job, is paid at a different basic rate when worked at a different shift? A. There is, to my knowledge.

Q. Will you indicate what those are and where? A. There are two that I am aware of, Central Falls, Rhode Island and Wellsboro, Pennsylvania.

Q. And Central Falls, Rhode Island, is the one that is also subject to litigation, is that correct? A. I believe so.

The Court: What job is that, Mr. McKibbin, do you [444] know?

The Witness: I believe the job classification in Rhode Island is an inspector operative job title. I think the one in Wellsboro may be inspector, Class C, or inspector Class B and C. There may be others that I don't recall at the moment.

By Mr. LaRuffa:

Q. Mr. McKibbin, in Corning, New York, until June of 1966, you always had a male rate and a female rate, is that correct? A. Yes.

Q. Because of that, isn't it a fact that the female rate up to 1966 was always lower than the male rate? A. I believe that is correct.

Mr. Wayman: Objected to.

The Court: Overruled.

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[447] Q. Isn't it a fact that women could only transfer to a night shift if a vacancy occurred after that seniority date? A. After June 1, 1966, yes.

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[449] EDWARD W. NOBLE (120 Circle Drive, Bath, New York), being duly sworn as a witness in behalf of the Defendant, testified as follows:

Direct Examination by Mr. Wayman:

Q. Mr. Noble, I believe you have already given the deposition and I just have a couple of questions for you in addition to the answers you have given therein. You are of course familiar with the CGW Job Evaluation system? A. Yes.

Q. Did you assist in developing that system? A. Yes.

Q. Does the CGW Job Evaluation system take into account in any manner any factor whether the work is done at day or night? A. It does not.

Q. Are you also familiar with the so-called SJ & H Plan? A. Yes.

Q. Did that plan take into accounnt any factor as to whether or not the work was done at day or night? A. It did not.

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[460] JOHN D. BARKER (295 West William Street, Corning, New York), a witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

* * *

[462] Cross Examination by Mrs. Cappello:

* * *

By Mrs. Cappello:

Q. Excuse me, Mr. Barker. The women who worked on the night shift then were paid the same as the women who worked on the day or night shift during World War II? A. Do I understand right? Is this on a woman's job or a man's job you are referring to?

Q. What is the woman's job?

The Court: We are referring to World War II.
The Witness: Right.
The Court: All right.

The Witness: The women's job was the inspection job, but then when you go on nights, the man, he was doing the job and he got extra pay for it.

By Mrs. Cappello:

Q. Yes, we understand. A. So when the women went on nights, she got the same rate he did. If she came back on days, she got the [463] women's rate for the job.

Q. You said, some women on the night shift, continued to receive the same rate as the women on the afternoon shift? A. I did not say that.

Q. I do not understand your position. Some women did not get the male rate at night? A. They did not get the full rate, some of them, because they did not do the same job as the man. They were physically unable to do so.

Q. What rate did they get compared to the women on the day shift? A. They got the women's rate, plus whatever percentage of the man's job she did at that time.

Q. They weren't getting the differential, because it was at night? A. No, she was not.

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PLAINTIFF'S EXHIBIT 1.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES
SET NO. 1

Defendant by SETH J. McKIBBIN, Manager of Statistics and Surveys, Corning Glass Works, answers plaintiff's interrogatories as follows:

Interrogatory No. 1:

1. (a) Name, by plant, and in order of seniority, all Class C, Class B, General TV, and TV Inspectors for the period from June 11, 1964, to May 31, 1966.

(b) As to each Inspector named in answer to (a), state:

* * *

(8) Shift differential set by union contract, if any

* * *

Answer to Interrogatory No. 1:

* * *

(8) Shift differential set by union contracts dated January 9, 1964 and December 17, 1965, applicable to the period of June 11, 1964 through May 31, 1966 were as follows:

Plaintiff's Exhibit 1.

"Shift Differential:

"Section 1. Workers employed on shifts starting at 2:00 P. M., 3:00 P. M., and 4:00 P. M. will be paid $0.06 per hour as a premium for such work.

"Section 2. Workers employed on non-rotating shifts starting at 10:00 P. M., 11:00 P. M., and Midnight will be paid $0.12 per hour as a premium for such work.

"Section 3. Workers employed on rotating shifts starting at 10:00 P. M., 11:00 P. M., and Midnight will be paid $0.08 per hour as a premium for such work."

In addition the parties, by a past practice endorsed by union contract, paid a supplemental escalating shift differential to inspectors who worked a non-rotating night shift.

• • •

Interrogatory No. 8:

8. Since June 11, 1964, have the men and women Class C, Class B, TV and General TV Inspectors performed their jobs under similar working conditions?

Answer to Interrogatory No. 8:

8. No.

Plaintiff's Exhibit 1.

Interrogatory No. 9:

9. If the answer to Interrogatory No. 8 is "no," explain the difference.

Answer to Interrogatory No. 9:

9. In accordance with past practice under current and predecessor contracts, women were assigned to inspection activities on the day and/or afternoon shifts. Some of them worked steady days or steady afternoon shifts, while others rotated between the day and afternoon shifts on a bi-weekly cycle. To a large degree these assignments were made according to the desires of individual employees.

The men, on the other hand, worked a steady night shift and never worked either the day or afternoon shifts. This practice began about 1930 when machine production was substituted for hand production in the Forming department. Two shifts of inspection (day and afternoon shifts) could not keep pace with the three shifts of forming production. By New York State Law, women were prohibited from working the night shift. Thus, men were diverted from other activities in order to man this essential operation on the night shift, and their wage rates were not cut.

It was not practicable to reduce the rates of the men transferred to the steady night shift, for they could earn higher rates on other jobs, and in addition could get substantially more hours of work, and thus earn substantially more money. The work was not only less remunerative, but enjoyed less prestige.

The men on the steady night shift were able to and did more physical work, such as lifting and carrying. They

also required less relief time than did the women on day or afternoon shifts.

In addition, they were working the least desirable of all working hours, and working them on a steady shift, without rotating shifts.

At that time there was no general shift differential. It did not come into existence in these plants until the advent of the union about 1944.

The working conditions of the men were thus substantially different than those of the women when this steady night shift differential was established.

Interrogatory No. 10:

10. If defendant pays shift differentials—

    (a) What are they?

    (b) How long have they been in effect?

    (c) Are they set by union contract?

    (d) Do they apply to all departments in all plants of Corning Glass Works? If not to all, list the departments and plants to which they do, or do not, apply.

Answer to Interrogatory No. 10:

10. (a) Rotating and/or non-rotating evening shifts at 6¢ per hour; rotating night shifts at 8¢ per hour; non-rotating night shifts at 12¢ per hour. Aforementioned supplemental escalating differential applicable only to non-rotating night shift inspectors. The amount of this supplement varies:

Plaintiff's Exhibit 1.

	Class C	*Class B*
1st 30 days	$ .04	$ .04
2-4 months	.08	.04
5-10 months	.125	.045
11-16 months	.165*	.085*
17-22 months	.165*	.135*
23 or more months	.165*	.195*

*Includes merit increase increment(s).

(b) The supplemental differential cited above existed from 1930 on with the size varying from time to time as a result of the agreed upon rates applicable to the job classifications:

	Inspector C *Max. Differential*	*Inspector B* *Max. Differential*
1945	$.14	$.14
1946—64	.16	.18
1965	.165	.19
1966	.165	.195
1967	.165	.195

Since January 20, 1944, they have been established by Union contract. The other differentials were initiated as part of the first contract between the parties dated January 20, 1944. Subsequent contracts revised and improved these differentials. The existing formulae have remained unchanged since the December 8, 1958 contract.

Plaintiff's Exhibit 1.

Shift Differential		*Date Effective*
$.03 Non-Rotating Afternoon Shift) .05 Non-Rotating Night Shift)		January 20, 1944
$.04 Afternoon Shift) .06 Night Shift)	Rotating or Non-Rotating	January 20, 1945
$.04 Afternoon Shift) .06 Night Shift)	Non-Rotating	January 20, 1946
.02 Afternoon Shift) .03 Night Shift)	Rotating	
Night Shift, Non-Rotating changed $.10		October 20, 1947
$.04 Evening Shift) .06 Night Shift)	Rotating changed	November 3, 1952
$.06 Afternoon Shift	Rotating or Non-Rotating	
.08 Night Shift .12 Night Shift	Rotating Non-Rotating	December 8, 1958

(c) Yes, as described above.

(d) All except the supplemental differentials, as cited above, apply throughout the establishments covered by this suit.

Interrogatory No. 11:

11. Since June 11, 1964, have there been departments staffed exclusively by men or exclusively by women?

Answer to Interrogatory No. 11:

11. In the alleged establishment covered by this suit there are some departments which since November 1, 1964 have been staffed exclusively by men or women. However, we

should point out that this is not necessarily a static condition, but that it can change and has changed from time to time as a result of movement of employees by promotion, transfer or bumping by seniority.

Interrogatory No. 12:

12. If the answer to Interrogatory No. 11 is "yes," answer the following, with dates:

    (a) Which departments and in which plants?

    (b) Which departments operate a third shift?

    (c) What shift differential, if any, has been paid for the third shift?

    (d) Is the base hourly rate for employees on the non-rotating third shift the same as for the first and second shift employees of equivalent or comparable seniority?

Answer to Interrogatory No. 12:

(a) and (b) The data requested are set forth in Exhibit D attached hereto and made part hereof.

(c) Shift differentials have been paid in accordance with the contract.

(d) Yes.

Interrogatory No. 13:

13. During World War II did defendant replace men inspectors with women inspectors?

Plaintiff's Exhibit 1.

Answer to Interrogatory No. 13:

13. Defendant did not replace men with women inspectors. As manpower became tight women were assigned to night inspection work, under a special state permit, but they did not perform the same duties that men on nights had performed.

Interrogatory No. 14:

14. If the answer to Interrogatory No. 13 is "yes," answer the following:

(a) Did the women receive the same base hourly rate as the men with equivalent or comparable seniority?

(b) Were the inspectors on the first, second and third shifts at any time during this period composed entirely of women?

(c) If the answer to (b) is "yes," did the women on the third shift receive the same base hourly rate as the women of equivalent or comparable seniority on the first and second shifts?

Answer to Interrogatory No. 14:

14. (a) No.

(b) No.

(c) Not applicable.

Interrogatory No. 15:

15. On June 11, 1964, did defendant maintain a separate seniority list for men and women inspectors?

Plaintiff's Exhibit 1.

Answer to Interrogatory No. 15:

15. The Company did not maintain separate seniority lists of male and female inspectors as such. The Company did maintain separate seniority lists for men and women pursuant to long established union-management understandings and practices.

Interrogatory No. 16:

16. If the answer to Interrogatory No. 15 is "yes," state how long these separate lists were maintained.

Answer to Interrogatory No. 16:

16. From about 1944 until May 31, 1966.

* * *

Interrogatory No. 18:

18. If the answer to Interrogatory No. 17 is "no," when were the separate lists discontinued?

(a) If discontinued, were women inspectors of greater seniority who applied for third shift work able immediately to displace men inspectors on the third shift of the same class, but of lesser seniority?

Answer to Interrogatory No. 18:

18. On May 31, 1966 the seniority lists were combined.

(a) Beginning with June 1, 1966, women inspectors were able to use seniority to take jobs on the steady third shift, and many did so, under union-management agreed upon seniority rules and

practices when vacancies and reductions in force occurred. The rules for application of seniority were not changed.

Interrogatory No. 19:

19. Does defendant have a job evaluation plan?

Answer to Interrogatory No. 19:

19. Defendant has two different job evaluation plans.

Interrogatory No. 20:

20. If the answer to Interrogatory No. 19 is "yes," at how many points are the following jobs evaluated.

(a) Class C Inspector on the first and second shift?

(b) Class C Inspector on the third shift?

(c) Class B Inspector on the first and second shift?

(d) Class B Inspector on the third shift?

(e) TV Inspector on the first and second shift?

(f) TV Inspector on the third shift?

(g) General TV Inspector on the first and second shifts?

(h) General TV Inspector on the third shift?

Answer to Interrogatory No. 20:

20. Under either of the above two evaluation plans the evaluated points do not reflect a difference for any given job as it occurs on the various shifts.

Plaintiff's Exhibit 1.

	Evaluated Points	
	S, J & H Plan (1)	*CGW Plan (2)*
(a) Inspector Class C		
1st Shift	230	930
2nd Shift	230	930
(b) 3rd Shift	230	930
(c) Inspector Class B		
1st Shift	345	975
2nd Shift	345	975
(d) 3rd Shift	345	975
(e) TV Inspector		
1st Shift	230	930
2nd Shift	230	930
(f) 3rd Shift	230	930
(g) General TV Inspector		
1st Shift	345	980
2nd Shift	345	980
(h) 3rd Shift	345	980

(1) Obsolete plan but still in effect in Corning, New York.

(2) A new plan developed by the company, in effect in 24 branch plants, which has been presented to Local #1000 of the American Flint Glass Workers Union in Corning on six separate occasions.

Interrogatory No. 21:

21. If the answer to Interrogatory No. 19 is "yes,"—

(a) How long has the job evaluation plan been in use?

(b) Was it adopted by collective bargaining agreement, or unilaterally by defendant?

Plaintiff's Exhibit 1.

Answer to Interrogatory No. 21:

21. The defendant has two job evaluation plans.

The earliest of these plans, which we designate as the "S, J & H Plan" (Stevenson, Jordan & Harrison), was installed department by department in Corning starting in 1946, each installation being subject to the collective bargaining process. The plan is still not in effect in some departments in Corning, nor is there any agreement or proposal to extend it to these departments.

The "S, J & H Plan" has long been recognized to have deficiencies:

1. A significant number of jobs were never brought under the plan.
2. A number of jobs were, subsequent to installation, removed from the plan.
3. The descriptions were neglected and permitted to get out of date except when the union felt a rate increase could be brought about.
4. The system did not provide for measurement of Physical Effort.
5. The degree definitions under each factor were ambiguous.
6. The plan failed to respond with rate increases on jobs which were significantly changed.

The second plan, which is designated as the CGW Plan, was developed over a period of several years starting in 1957 as a result of recognition within the company that the S, J & H Plan was an unsatisfactory tool, and the growing

dissatisfaction of the union with the S, J & H Plan for some of the reasons listed above. The new plan was first installed in 1960 in a branch plant. It has been placed in operation in 24 of the company's branch plants of which 21 are AFGWU organized. In the December, 1962 negotiations, the company made its first official offer of the CGW Plan to Local #1000 (Corning) of the AFGWU and was rejected as it has been in five subsequent presentations.

Officially the S, J & H Plan is still in effect in Corning, New York, because the Union has thus far refused to agree to the modern CGW plan. However the company fully endorses the universal use of the CGW Plan throughout the company as the soundest and fairest way to maintain equitable rate relationships on hourly paid jobs. It is ready to install the CGW Plan in Corning, and it has completed new descriptions and evaluations under the plan.

s/ SETH J. McKIBBIN.

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PLAINTIFF'S EXHIBIT 4.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES, SET NO. 1

EXHIBIT D

[Responsive to Interrogatory No. 12]

Dept. No.	*Dept.*	*Men*	*Women*	*Third Shift*
"A" FACTORY				
0100	Cleaners	5	–0–	No
0101	Hand Blown Prod.	114	–0–	No
0103	Automatic Prod.	75	–0–	Yes
0104	Automatic Flat Prod.	52	–0–	Yes
0106	Maintenance	25	–0–	Yes
0107	Mold Room	21	–0–	No
0902	Plant Mfg. Eng.	4	–0–	No
1502	Melting	17	–0–	Yes
1503	Lehrs	4	–0–	Yes
1602	Forebays & Forehearth	13	–0–	Yes
1702	Mixing	18	–0–	Yes
1704	Trades	100	–0–	No
1705	Machine Shop	67	–0–	No
1801	Pack, Stores & Shipping	12	–0–	Yes
"B" & "C" FACTORY				
2001	Trades	17	–0–	No
2002	Equip. Maintenance	11	–0–	Yes
2007	Mold Maintenance	5	–0–	No
2009	Clean & Elev. Oper.	7	–0–	No
2205	Lehrs	6	–0–	Yes
2302	Hand Blown	68	–0–	Yes
2402	Hand Press	19	–0–	Yes
2502	Automatics	18	–0–	Yes
2801	Melting	53	–0–	Yes
2901	Mixing	12	–0–	Yes
2906	Shipping	3	–0–	No

Plaintiff's Exhibit 4.

Dept. No.	*Dept.*	*Men*	*Women*	*Third Shift*
PRESSWARE				
1801	Melting	15	–0–	Yes
1802	Melting	17	–0–	Yes
1803	Melting	4	–0–	Yes
1807	Melting	6	–0–	Yes
1808	Melting	5	–0–	Yes
1809	Melting	6	–0–	Yes
2405	P. W. West Forming	74	–0–	Yes
2704	P. W. Forming	52	–0–	Yes
2705	P. W. Forming	181	–0–	Yes
4303	Rectangular Color Dev. & Finishing	10	–0–	Yes
6101	Trades & Plant	104	–0–	Yes
6105	Services	1	–0–	No
6108	Services	2	–0–	Yes
6202	Mold Shop	31	–0–	Yes
6303	Feeder Maintenance	17	–0–	Yes
6308	Feeder Maintenance	6	–0–	Yes
6404	Machine Shop	14	–0–	Yes
6707	Finishing Maintenance	6	–0–	Yes
6708	Finishing Maintenance	1	–0–	No
7404	Storeroom	5	–0–	Yes
9101	Shipping	23	–0–	Yes

PLAINTIFF'S EXHIBIT 6.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES, SET NO. 2, TO THE EXTENT NOT SUBJECT TO OBJECTIONS NOW PENDING

* * *

Interrogatory I (d):

(d) Answer 1(b) (8) refers to a "supplemental escalating shift differential to inspectors who worked a nonrotating night shift."

(1) How long has the term "supplemental escalating shift differential" been in use by defendant?

(2) Is this term in the union contracts, and, if so, identify the provision in the first contract in which it was used, and in subsequent contracts.

(3) Is this term used in any documents of Corning Glass Works, New York? If so, identify by name, date, and custodian.

(4) Is this "supplemental escalating shift differential" in addition to, or included in, the "base hourly rate of pay" given for the night shift inspectors in answer 1(b)(6)?

Plaintiff's Exhibit 6.

Answer to Interrogatory I(d):

(1) This is merely a descriptive term used in answering Plaintiff's Interrogatories, Set No. 1. It is not otherwise used.

(2) No.

(3) No.

(4) Included.

• • •

Interrogatory IV (c):

(c) Since June 1, 1966, how many women inspectors have gotten onto the third shift by bidding? By bumping?

Answer to Interrogatory IV (c):

124 different women:

122 by bidding 206 times
25 by interplant bumping 34 times

Note: A woman may bid to take the job initially, leave it later and return to it still later via either another bid or a bump.

Interrogatory IV(d):

(d) Since June 1, 1966, how many vacancies have occurred on the night shift?

Answer to Interrogatory IV(d):

By stipulation, this refers only to inspectors. There were approximately 296 such openings.

Plaintiff's Exhibit 6.

Interrogatory IV(e):

(e) On June 1, 1966, how many men inspectors were on the night shift and how many had been inspectors for a shorter length of time than the most senior woman inspector? What was the average length of time the men had been employed as inspectors?

Answer to Interrogatory IV(e):

By stipulation, this refers only to the number of men inspectors on night inspection jobs on June 1, 1966. On that date there were 101.

Interrogatory V:

Answer 5 states that from June 1, 1966, to April 14, 1967, 101 women for some part of the period used seniority to take steady night shift jobs and 24 men took day or afternoon shift jobs.

(a) As to the 24 men state: (1) their names; (2) the date each went on the day or afternoon shift; (3) how long each had been employed at defendant's plant; (4) how long each had been an inspector; (5) whether seniority was used to get on the day or afternoon shift; (6) their rates or pay prior to and after the transfer; (7) how much actual reduction in pay each suffered; (8) how long each stayed on the day or afternoon shift; (9) to what job and rate each transferred from the day or afternoon shift if no longer there.

Answer to Interrogatory V(a):

In addition, there is attached hereto as Exhibit I a document of two pages giving the detailed date requested in

answer to this interrogatory. In each instance cited the employee used his seniority to take the job.

• • •

Interrogatory X:

(a) Answer 10 refers to a "supplemental escalating differential applicable only to non-rotating night shift inspectors." Is this the same differential referred to in answer 1(b)(8)? Do the answers to Interrogatory I(d) in Set No. 2 of plaintiff's interrogatories apply to it?

(b) Answer 10 refers to rates established by union contracts of January 20, 1944, and December 8, 1958, and contracts in between. Quote or attach copies of these contracts and specify which provision of the contracts established the rates. If the rates are set forth in schedules separate from the contracts, quote or attach copies of the schedules. Name the person who has custody of these contracts and schedules and is best qualified to explain them.

Answer to Interrogatory X:

(a) Yes, to both questions.

(b) Copies of the contracts have already been furnished to Mr. LaRuffa. See our answer to Interrogatory I(b).

• • •

s/ SETH J. McKIBBIN.

PLAINTIFF'S EXHIBIT 13.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

EXHIBIT I TO DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES, SET NO. 2.

[Responsive to Interrogatory No. V]

Emp. #	Name	On Day Inspect.	Service Date	1st Date Inspec.	From Job	From $ Rate	Insp. $ Rate	$ Diff.	Off Day Inspect.	Job	Title
03882	R. L. Baker	8/10	04-20-66	02-28-68	Lay-off		2.37	+2.37	8/10	1036	Utility Worker
05558	G. L. Bebout	8/10	01-05-66	02-27-68	Lay-off		2.37	+2.37	8/10	1036	Utility Worker
08966	G. E. Bohart	8/18	03-14-68	04-22-68	1222	2.37	2.37	—	8/19	1036	Utility Worker
13267	R. A. Button	6/26	04-24-66	06-21-66	1113	2.375	2.18	— .195	6/32		Leave of Absence
13943	A. R. Cantineri	8/17	04-06-66	04-19-68	1036	2.33	2.33	—	8/21		Ill-health
13945	M. J. Cantineri	8/21	07-06-65	05-13-68	1036	2.42	2.37	— .06			
18404	C. E. Cooper	8/04	10-07-65	01-15-68	5918	2.46	2.37	— .09	8/04		Unreliable
20354	M. R. Cummings	8/04	01-03-64	01-19-68	2752	2.51	2.37	— .14	8/09	2752	TV Smoother & Polish.
20770	J. P. Czado	8/06	09-07-65	02-01-68	Lay-off		2.37	+2.37	8/06	1036	Utility Worker
21476	D. W. Davies	6/25	06-13-66	06-13-66	New Hire		2.14	+2.14	6/26	1217	Sweeper & Cleaner
26443	R. N. Eddy	8/05	11-18-63	01-22-68	1036	2.46	2.37	— .09	8/05	5918	Laborer
29290	R. G. Fenton	8/23	05-15-68	05-29-68	2331	2.49	2.29	— .20			
31024	G. A. Forsberg	6/26	06-10-66	06-21-66	1036	2.18	2.14	— .04	6/26	1222	Cleaner
34428	G. A. Giannini	7/16	05-01-42	01-07-46	4671	2.475	2.28	— .195	7/21	4671	Gen. TV Insp. (N)
37300	A. E. Gridley	6/26	04-11-66	05-02-66	1036	2.22	2.22	—	6/37	1222	Cleaner
37374	M. P. Griffin	8/18	03-30-68	04-22-68	1036	2.33	2.33	—	8/19	1036	Utility Worker
37417	D. R. Grist	6/26	04-11-66	05-16-66	2355	2.22	2.22	—	6/37	1006	Standard Shop Boy
40467	J. R. Harp	8/11	04-19-66	02-26-68	1036	2.46	2.37	— .09	8/12	2331	Automatic Boy
41969	W. R. Helms	7/21	01-17-52	08-22-56	Disability		2.28	+2.28	7/21	4671	Gen. TV Insp. (N)
		7/28	01-17-52	08-22-56	4671	2.475	2.28	— .195	7/28	1036	Utility Worker

Plaintiff's Exhibit 13.

Emp. #	Name	Inspect.	Date	Inspec.	Job	$ Rate	$ Rate	$ Diff.	Inspect.	Job	Title
47169	R. P. Iverson	8/04	09-02-64	01-15-68	2752	2.575	2.37	— .205	8/05	4672	Gen. TV Insp.
		8/06	09-02-64	01-15-68	4658	2.37	2.37	—	8/06	2752	TV Smoother & Polish.
51527	G. E. Knapp	8/04	09-03-65	11-20-56	5918	2.46	2.37	— .09	8/05	1020	Operative Multiform
53522	G. N. Lamb	8/23	05-15-68	05-27-68	2180	2.33	2.29	— .04			
54662	R. R. Learn	8/17	01-04-66	04-19-68	2752	2.575	2.37	— .205	8/18	1036	Utility Worker
54719	C. E. LeBarron	6/52	05-18-66	12-21-66	1113	2.485	2.28	— .205	6/52	1036	Utility Worker
55575	P. E. Lewis	7/22	03-12-52	06-23-52	1409	2.365	2.28	— .085	7/24	1036	Utility Worker
55910	E. D. Lind	8/05	01-03-64	01-29-65	1036	2.46	2.37	— .09	8/06	1036	Utility Worker
57274	C. D. Lovell	8/03	10-04-65	01-15-68	4094	2.46	2.37	— .09	8/03		Lay-off
59266	J. E. Mann	8/05	09-02-65	01-26-68	Lay-off		2.37	+2.37	8/07	3541	Machine Finishing
65907	G. L. Morse	6/52	05-19-66	12-21-66	1113	2.525	2.28	— .245	7/1		Lay-off
66103	R. L. Moore	7/1	05-09-66	12-30-66	1036	2.485	2.28	— .205	7/1	1036	Utility Worker
66267	F. C. Morton	7/27	10-05-50	07-20-53	4671	2.475	2.28	— .195	7/33	4671	Gen. TV Insp. (N)
67026	D. P. Murphy	6/26	09-03-59	05-02-66	1377	2.305	2.22	— .085	7/11	1036	Utility Worker
67550	G. L. Nash	6/52	05-16-66	12-21-66	1036	2.365	2.28	— .085	7/01	1036	Utility Worker
71447	C. D. Parker	6/52	04-26-66	12-20-66	1113	2.485	2.28	— .205	7/01	1036	Utility Worker
75762	E. E. Raub	8/04	09-02-65	01-15-68	1036	2.46	2.37	— .09	8/05	4549	Inspector Operative
75763	I. E. Raub	8/04	08-25-65	01-15-68	1036	2.46	2.37	— .09	8/05	1051	Alum. Forming Oper.
77256	S. L. Riley	6/52	05-16-66	12-21-66	1378	2.325	2.28	— .045	7/01	1036	Utility Worker
79095	D. W. Rumberger	8/6	08-27-65	02-16-66	Lay-off		2.37	+2.37	8/09	4671	Gen. TV Insp. (N)
80334	C. E. Saxbury	6/52	09-13-57	12-20-66	1113	2.525	2.28	— .245	7/01	1036	Utility Worker
84334	W. Skelly	7/1	05-12-66	12-27-66	1036	2.325	2.28	— .045	7/01	1036	Utility Worker
84953	R. L. Smith	6/26	12-31-65	06-02-66	1377	2.265	2.22	— .045	6/38	1036	Utility Worker
86123	D. E. Stabley	7/17	11-06-51	05-18-60	4671	2.475	2.28	— .195	7/17	1409	Common Laborer
88630	L. B. Swan	6/52	05-16-66	12-20-66	1113	2.485	2.28	— .205	7/01	1036	Utility Worker
89911	W. S. Tompkins	8/10	04-18-66	02-26-68	2251	2.46	2.37	— .09	8/11	1036	Utility Worker
91570	R. L. Tyler	8/04	07-02-65	01-16-68	1036	2.42	2.37	— .05	8/05	4549	Inspector Operative
92487	L. R. Van Pelt	7/01	05-16-66	12-20-66	1113	2.485	2.28	— .205	7/01	1036	Utility Worker
93519	D. E. Wainwright	8/04	02-12-64	01-17-68	2180	2.42	2.37	— .05	8/06	1036	Utility Worker
95166	R. H. Webster	7/01	05-16-66	12-28-66	1343	2.20	2.28	+ .08	7/02	3104	Operator Tube Draw.
95741	G. W. Welty	7/01	05-16-66	12-27-66	1036	2.325	2.28	— .045	7/02	1505	Tank Filler
96355	D. E. Wheaton	6/36	02-28-52	09-14-59	Disability		2.22	+2.22	6/40	4815	Control Inspector TV
97721	K. E. Wilson	6/52	05-12-66	12-20-66	1036	2.325	2.28	— .045	7/01	1036	Utility Worker
99586	W. L. Youngs	6/52	05-18-66	12-20-66	1036	2.325	2.28	— .045	7/01	1505	Tank Filler

PLAINTIFF'S EXHIBIT 27.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEFENDANT'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S INTERROGATORIES, SET NO. 2.

• • •

Interrogatory III (e), Answer III(a) states that "[t]he inspector jobs on the steady night shift are higher rated jobs than the corresponding activities on the day and/or evening shifts" due to "the less desirable hours of work, inconvenience of working steady nights, etc." Exactly how and at what rate has defendant compensated steady night shift employees, other than inspectors, for the less desirable hours of work and inconvenience, etc.?

Answer to Interrogatory III (e):

By shift differentials negotiated with the Union as described in the answer to Interrogatory No. 10 of Defendant's Answers to Plaintiff's Interrogatories, Set No. 1.

• • •

SETH J. McKIBBIN

SETH J. MCKIBBIN

• • •

PLAINTIFF'S EXHIBIT 30.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY GROUP NUMBER CONVERSION TABLE

IRREGULAR SCHEDULE			*REGULAR SCHEDULE*		
Present Group Number		*New Group Number*	*Present Group Number*		*New Group Number*
Male	*Female*		*Male*	*Female*	
6.1A		3.1		1, 2, & 3A	1
6.2A		3.2		4 & 5A	2
7.1A		4.1		6A	3
7.2A		4.2	1	7A	4
7.3A		4.0	2	8A	5
8.1A		5.2	3	9A	6
			4	10A	7

3.1 & Above Add 3 to present Group Number.

5 & above Add 3 to present Group Number.

AJA,Jr/wd
6-10-64

• • •

PLAINTIFF'S EXHIBIT 32.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

CONVERSION SCHEDULE

Cancels sheet dated November 19, 1962
Effective June 11, 1964

REGULAR SCHEDULE

Grp. #	*Trainee*	*Minimum*	*Maximum*
1			1.975
2	1.975		2.015
3	1.975		2.055
4	2.015		2.095
5	2.015		2.135
6	2.015		2.185
7	2.015	2.055	2.235
8	2.015	2.095	2.285
9	2.015	2.135	2.345
10	2.055	2.185	2.40
11	2.095	2.235	2.475
12	2.135	2.285	2.545
13	2.185	2.345	2.63
14	2.235	2.40	2.69
15	2.285	2.475	2.765
16	2.345	2.545	2.845
17	2.40	2.63	2.925
18	2.475	2.69	2.995
19	2.545	2.765	3.085
20	2.63	2.845	3.18
21	2.69	2.925	3.275
22	2.765	2.995	3.36
23	2.845	3.085	3.465
24	2.925	3.18	3.565
25	2.995	3.275	3.675
26	3.085	3.36	3.785
27	3.18	3.465	3.90

[1] **PLAINTIFF'S EXHIBIT 33.**

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEPOSITION OF EDWARD W. NOBLE.

[November 6, 1968]

Appearances:

Mrs. Isabelle R. Cappello, Deputy Counsel for Regional Litigation, U. S. Department of Labor, Washington, D. C., on behalf of Plaintiff.

Francis V. LaRuffa, Esq., Chief Trial Attorney, U. S. Department of Labor, 341-9th Avenue, New York, N. Y., on behalf of Plaintiff.

Scott F. Zimmerman, Esq., Reed, Smith, Shaw and McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania, on behalf of Defendant.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

[3] PROCEEDINGS

Whereupon,

EDWARD W. NOBLE, was called as a witness by Counsel for the plaintiff, and testified as follows:

Direct Examination by Mrs. Cappello.

By Mrs. Cappello:

Q. Would you state your name and address, for the record, please? A. Edward W. Noble, 120 Circle Drive, Bath, New York.

Q. Are you employed by Corning Glass works? A. Yes, I am.

Q. How long have you been employed by them? A. Twenty seven years.

Q. Would you state the positions that you have held and the approximate periods of time that you held them? A. Yes, sir. This is going to be kind of memory—

Q. Sure— A. Approximately two years as an hourly employee in miscellaneous manufacturing activities in the Pilot plant for manufacturing optical glass here in Corning. The next several years involved in sales—service work, sales correspondence and the like, and since about 1945 involved in various industrial engineering [4] until my present employment as manager of job evaluation.

Q. Mr. Noble—

Mr. LaRuffa: Excuse me, what is your present position?

The Witness: Manager of job evaluation.

• • •

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

By Mrs. Cappello:

[11] Q. Would you now describe the working conditions of these inspectors? A. Well, again, when we talk work conditions, I am not just sure what you mean by working conditions?

Q. What do you mean when you evaluate a job? A. What we are considering in working conditions is the weight that the people have to lift, for example in other words we are considering the hazard, we would consider the possible hazards of strain, sprains, cuts, bruises and those things that would be considered basically an injury, and we are also considering the surrounding conditions or degree of unpleasantness that exists with these jobs. In other words, does the job require exposure to heat, noise, fumes, dust and things of this sort. Now, these jobs—the most part are in what we would consider a fairly typical factory condition. There is some heat, there is some noise and there is some fumes, but we would consider it as pretty much an average or a normal factory condition.

• • •

[12] Q. Do these jobs vary from shift to shift? A. Varied as far as evaluation plan is concerned, or varied—

Q. Well, as you know, how these jobs are performed, do they vary from shift to shift? A. Today I don't think there is very little difference from shift to shift.

• • •

By Mrs. Cappello:

[22] Q. Do you know if men regard inspection work as lacking in prestige? A. I have heard that stated, yes.

Q. Do you know why? A. Yes. They consider it female work.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

Mr. Zimmerman: It is your understanding, any way?

The Witness: That's right.

• • •

By Mrs. Cappello:

[40] Q. Have you ever been asked to get out new jo descriptions for these jobs? A. Our inspection classific tions have remained fairly constant over the years, Mr Cappello.

Q. So you believe your supervisors out in the plan feel they are accurate? A. Yes.

Q. Why are working conditions omitted from M a N—Exhibits M and N? A. M and N?

Q. Yes? A. Well, I think you will find that under o S J and H System, if the working conditions were con dered typical factory conditions, no award was given.

Q. The working conditions on the others are graded G; is that correct? A. I see that statement.

Q. Well, would that be true of M and N? A. Yes. far as I am concerned, apparently this was the techni that some of the analysts used to just indicate—

[41] Mr. Zimmerman: Which exhibit are you look at?

The Witness: On this particular one, this is i this is exhibit—

By Mrs. Cappello:

Q. All of them but M and N have working condit graded as G; is that right? A. Yes, that is correct. I couldn't testify as to why it was put on there, except that has no award, as such.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

Q. Well, what do you consider working conditions under the SJ and H plan? A. Working conditions are twofold. One is surrounding conditions, which are the unpleasantness, degree of unpleasantness, and it would be the severity and frequency of exposure to such things dust, heat, noise, fumes, wetness, things of that sort.

Q. Is the time of day work considered? A. No, it is not, and we also have the hazard conditions as another consideration under working conditions, and there again it is the frequency and type possible injury or hazard, such as cuts, burns, bruises, and things of this sort.

• • •

By Mrs. Cappello:

[48] Q. Now, I would like to ask you some questions about the S, J and H Plan, Mr. Noble, were the jobs of Class C, Class B, T. V. and General T. V. Inspectors evaluated at different points on the different shifts under this plan? A. No—well, wait a minute they were—yes, Class C had a different title than Class B, if that is what you mean, the total points—

Q. No, Class C jobs on all three shifts, was it evaluated? A. I am sorry, I misunderstood your question. It was the same on all three shifts.

Q. And this applies to all of those jobs? A. Right.

[49] Q. Did you bring with you the analysis sheets on these jobs, that is, number three?

Mrs. Cappello: Please mark as Exhibit E to Mr. Noble's deposition the summary sheet for "A" factory.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

(Whereupon, the document was marked for identification as Plaintiff's Exhibit E.)

Mrs. Cappello: Would you please mark as Exhibit F to Mr. Noble's deposition the summary sheet for "B" and "C" factory, department, pressware inspection, finishing, and packing.

(Whereupon, the document was marked for identification as Plaintiff's Exhibit F.)

Mrs. Cappello: Would you please mark as Exhibit G to Mr. Noble's deposition the summary sheet under the SJ and H plan in pressware.

(Whereupon, the document was marked for identification as Plaintiff's Exhibit G.)

Mrs. Cappello: Would you please mark as Exhibit H to Mr. Noble's deposition the analysis sheets under SJ and H plan for Class B—let's just call them analysis records. This consists of thirteen pages.

(Whereupon, the document was marked for identification as Plaintiff's Exhibit H.)

By Mrs. Cappello:

Q. Using these exhibits, Mr. Noble, would you please state what the working conditions are for the day, afternoon, and night Class C, Class B, TV, and general TV inspectors? A. From this material, Mrs. Cappello, it is impossible to identify the working conditions, because it is not specified [50] as—other than some of these things right in here.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

Now, we have to understand what these were, and I want to clarify the record.

Q. Are you referring to the analysis— A. I am referring to the analysis record.

Q. Exhibit H? A. Right, these were preliminary work sheets that were subsequently summarized, and included on the descriptions that have been in previous exhibits, and these were never typed up, for example, and these were—when we did our original analysis work.

Q. These are the job descriptions that were Exhibits K to V to the second set Interrogatories? A. Right. The purpose of this was—the analyst went out into the shop area, and looked at the work and accumulated this information, which was subsequently transferred to a description. Now, many of these—and I haven't gone through all of these—would have indicated that many of the plants had a number of different types of inspection. In other words, an inspector might be involved only with the—with a pressed ware item in this location, another he might be involved with an automatic item. We have to recognize at the time this system was in the process of being developed or applied, we had many, many types of inspection, and it wasn't until we got into a formal job evaluation that we tended to [51] characterize them in basically two levels, B and C. We didn't continue the same.

Q. These analysis records are dated 1944 and 1943? A. I think most of them are dated 1944. Right. Here is one 1943.

Q. And, generally the working conditions were designated as what? A. As good.

Plaintiff's Exhibit 33.
Deposition of Edward W. Noble—Direct.

Q. And, what working conditions were considered under the SJ and H plan? A. Well, as I indicated to you, these would be a typical—what we considered a typical factory condition to be given in category—there would be some noise and some heat and some fumes, but not of a sufficient level of magnitude to justify giving the point awards.

Q. Is time of day considered a working condition under these? A. No, not under this.

Q. And, it is not considered a working condition under the CGW plan, either? A. No, it is not.

Q. Looking at the plan itself, the SJ and H plan, Mr. Noble, which is Exhibit D to your Interrogatory, and turning to page twelve—thirteen, does it show down at the bottom how you arrive at the rate for a job? [52] A. It shows this, and, to the best of my knowledge, this was never used in applying the system. This was used in the preliminary stages for developing some tentative schedules, and some preliminary work. The first wages that were paid under the system was in 1944, or 1946, I believe, at which time we had the schedule that is part of the exhibit. This approach for translating points into money, to the best of my knowledge, was never used for any payment of wages.

Mrs. Cappello: Off the record.

(Discussion off the record.)

By Mrs. Cappello:

Q. Looking at page thirty, Mr. Noble, of the SJ and H plan, does that provide for multiplying the rating factor of the job by the base rate male and the base rate female? A. As I previously testified, this was provided, and you will

notice by our—some of these sheets, we did have this on here, and it was never filled in, and as I indicated to you, this rating factor—this means of converting total points into a list was used primarily for development purposes, and to the best of my knowledge, was never used as a wage payment as such.

• • •

By Mrs. Cappello:

[53] Q. Under the CGW plan, what are the working conditions of inspectors considered to be? A. Basically the same as I described.

Q. Same as under the SJ and H plan? A. Right, the situation has not, basically, changed.

Q. And, time of day is not considered a working condition? A. It is not.

• • •

PLAINTIFF'S EXHIBIT 34.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

EVALUATION MANUAL

Hourly Jobs

SECTION I
Guide for Describing and Evaluating

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CORNING GLASS WORKS
Corning, New York

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The basis for evaluating a job is the description and analysis of the job. The primary purpose of these is to obtain information enabling the evaluator to establish an equitable rate of pay and to record the basis for that rate of pay.

An on-the-scene survey should be made of each job to secure information about each of the eleven factors, as called for on the Job Analysis Data Sheet (Form Q-38). A sample of this form will be found as the last sheet in this introduction. This sheet should serve as both a check sheet and a work sheet for recording specific job information and for development of the job description, and finally, for the job evaluation itself.

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As mentioned earlier, this job evaluation system covers eleven factors, each of which is described in detail on the

following pages of this manual. Each factor is evaluated by comparing the job in question with the appropriate bench mark jobs, except for one factor (Responsibility for Direction of Others) in which case a calculation must be made to determine the points.

The steps in the evaluation process are:

1. Thoroughly understand the job to be evaluated. This requires that you have prepared a complete, accurate Job Analysis Data Sheet and a well-written and approved Job Description.
2. Analyze the job, considering one factor at a time and follow the specific instructions for each factor. Make a preliminary decision concerning the appropriate degree for each factor through the aid of the degree definitions.

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GROUND RULES

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2. To maintain equity of rate relationships between jobs, each job will be reviewed once a year to determine if a change has occurred which would change the evaluated points. Any change occurring during the year should be recognized by a re-evaluation.

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FACTOR 10

SURROUNDINGS

Definition

This factor measures the degree to which the physical conditions surrounding a job are disagreeable. Consideration is given to:

1. The nature and degree of the unpleasant conditions.
2. The amount of time the employe is exposed to these conditions during the work day.

Discussion

Although the company attempts to provide favorable working conditions for its employes, the nature of some jobs makes them less desirable than others. This factor provides for awarding additional points in such cases. The conditions specifically referred to are dust, fumes and smoke, which make it necessary to wear uncomfortable safety equipment, and heat, glare, wetness, noise, vibration, grease, oil and exposure to all outside weather conditions.

Identify the conditions under which the job is performed and compare with the bench mark jobs on the following page to determine the points to be assigned. Do not consider the effect of summer and winter or night and day differences on the working conditions, but evaluate on a year around average condition.

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FACTOR 11

HAZARDS

Definition

This factor is a measure of the hazards of the job to which the employe is regularly exposed. Consideration is given to:

1. The degree to which unguarded hazards exist.
2. The frequency of exposure to the hazards.
3. The type and degree of possible injury.

Plaintiff's Exhibit 34.

Discussion

The company attempts to provide safe conditions on every job. Moving machinery such as gears, belts, and reciprocating parts have been covered with shields wherever practical; dust collection systems have been provided; lifting devices have been provided; and protective clothing and other safety devices have been furnished. Despite these efforts to protect the employe, there still remain hazards to which the employe is exposed. This factor provides the means of recognizing the varying degrees of hazard in a job.

It must be assumed that the employe is a normal individual adapted to the conditions of the specific job, and that he is exercising reasonable care and observing all safety regulations.

In evaluating hazards, consider only those that remain unguarded; that is, those which the employe must use his ingenuity and care to avoid. A shielded gear train is no longer a real danger, but hot power lines constitute a hazard to the electrician.

To determine the award for this factor consider the frequency of exposure to the hazardous condition, and the type and degree of possible injury (such as cuts, burns, strains, sprains, fracture) and compare with the bench marks on the following page.

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PLAINTIFF'S EXHIBIT 36.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY JOB EVALUATION

R-25 Job No.: 80-1353

Location: "A" Factory Typed: 3-10-64

Job Title: Inspector Class C Effective:

Analyst: R. L. Lewis

DESCRIPTION:

Inspects a limited variety of ware for specified glass quality, shop, finishing, and dimensional defects, using a limited variety of gauges and working according to standard procedures. This work includes such duties as:

Inspects ware visually for such defects as stones, seeds, chill wrinkles, shear marks, blisters, and for improper grinding, sandblasting, beading, lipping, etc. Uses gages such as go-no go, contour, snap, dial indicator, and wall reading. Maintains a record of quantity of ware rejected, and records reasons for failure of ware to pass inspection.

Wipes, wraps, and packs ware as instructed in accordance with standard procedures, using wiping cloths, wrapping, paper, and packing materials. Discards defective ware into specified cullet chute, bin, conveyor, or can.

Approved by *Date* *Approved by* *Date*

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Plaintiff's Exhibit 36.

ANALYSIS OF JOB

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
1. *Manual Effort*				
Handle under 15# such as: inspecting light ware	—	50	32	60
2. *Visual Effort*				
Over 25% of shift: performing visual and dimensional inspections of glass products, continuously, for regular types of defects.	1	50	27	75
3. *Manual Accuracy*				
No appreciable difficulty to meet tolerances such as: the use of gages, dials, rings and plugs for inspection of various dimensions and visual defects.	1	50	20	125
4. *Manual Complexity*				
Gange and visually inspect ware for defects.	—	50	6	105
5. *Job Knowledge*				
Knowledge of ware defects, simple gauges and inspection techniques for a limited variety of ware, may obtain information for drawings.	—	50	57	115

Plaintiff's Exhibit 36.

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
6. *Responsibility for Problem Solving*				
Problem such as when defects in product exceed number and degree specified for item being inspected.	—	50	57	155
7. *Responsibility for Materials and/or Product*				
Ordinary care to prevent loss such as: 100 pieces of acceptable hand shop items/shift, rejected due to improper comparison of defects to limit samples or improper use of no-go gages.	1	50	57	120
Special Loss Allowance				
8. *Responsibility for Equipment and/or Tools*				
Ordinary care to prevent loss from: damage to such equipment as gages due to improper use.	2	50	72	105
Special Investment Allowance				
9. *Responsibility for Direction of others*				
None				0
10. *Surroundings*				
Normal factory conditions.	—	50	14	30
11. *Hazards*				
Frequent exposure to minor injuries such as: cuts from broken ware and burns from hot ware.	—	50	6	40
Total Points				930

Plaintiff's Exhibit 36.

HOURLY JOB ANALYSIS DATA SHEET

Q-38 (rev.)
Location: "A" Factory
Analyst: R. L. Lewis
Date: 3-10-64
Job Title: Inspector, Class C
Job Code No.: 80-1353

Analyze the job—NOT the employee

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JOB CONDITIONS

Surroundings:

List elements regularly encountered: Intensity: Frequency: Normal factory conditions.

Hazards:

List hazards regularly encountered: Cuts, burns.
Severity of Injury: Minor.
Frequency: Frequent.

PLAINTIFF'S EXHIBIT 37.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY JOB EVALUATION

R-25 Job No.: 80
Location: "A" Factory Finishing Department Typed: 3/
Job Title: Inspector-Class B Effective:
Analyst: E. A. Welch Rev. 8/27/
Rev. 11/9

DESCRIPTION

Inspects a variety of shapes of ware made both au
tically and by hand for all types of glass quality,
finishing and dimensional defects, referring to glass
ings, written specifications, ware samples and verb
structions. Accepts or rejects ware. Checks dimen
conformance using go-no-go, gages, dial gages, c
gages, plug gages, ring gages, etc.

Inserts inspection tickets in cartons, glues labels in
operates ware counters, and sleeves ware as necessar

Washes, wipes, wraps and packs ware, in conjunctio
inspection as directed.
Seals cartons with tape, glue or staples as directed.

Records inspection results on proper report forms
forms foreman of defects found and any unusual t
the quality level.

Plaintiff's Exhibit 37.

Loads and unloads, in conjunction with inspection, finishing equipment such as diamond saw, drill press and automatic labeler.

Inspects ware such as: X-ray bulbs, refractors, pipe flanges, chemex ware, flares, stoppers, baking ware, etc.

Approved by	*Date*	*Approved by*	*Date*
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ANALYSIS OF JOB

	Bench Mark Jobs Less Than This Job	Same As This Job	More Than This Job	Points
1. *Manual Effort*				
Picks up, manipulates and packs ware weighing up to 15# continuously.	20	57	31	60
2. *Visual Effort*				
Close visual inspection of ware continuously.	29	57	67	75
3. *Manual Accuracy*				
Must use gages accurately for checking dimensional conformances.	60	57	65	135
4. *Manual Complexity*				
Manipulate ware and gage to correctly gage the ware such as: Reading wall thickness on optical gage.	15	57	39	105

Plaintiff's Exhibit 37.

	Bench Mark Jobs Less Than This Job	Same As This Job	More Than This Job	Points
5. *Job Knowledge*				
Thorough knowledge of all types of defects and their relationships to specifications.	23	57	19	120
6. *Responsibility for problem solving*				
Makes decisions as to accept or reject ware	19	57	28	170
7. *Responsibility for materials and/or product*				
Considerable care to avoid throwing away good ware or packing bad ware, such as: ½ to 1 hour of baking ware. (500—1000 pcs.)	54	57	48	135
Special Loss Allowance				
8. *Responsibility for equipment and/or tools*				
Ordinary care to avoid damaging gages.	23	57	40	105
Special Investment Allowance				
9. *Responsibility for direction of others*				
None				0
10. *Surroundings*				
Normal Factory conditions.	59	57	16	30
11. *Hazards*				
Frequent exposure to minor cuts and burns.	59	57	31	40
			Total Points	975

Plaintiff's Exhibit 37.

HOURLY JOB ANALYSIS DATA SHEET

Q-38 (rev.)
Location: A factory finishing department
Analyst: E. A. Welch
Date: 12-13-63
Job title: Inspector-Class B
Job Code No.: 80-4658

Analyze the job—NOT the employee

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JOB CONDITIONS

Surroundings:

List elements regularly encountered: Intensity:
Frequency: Normal factory conditions.

Hazards:

List hazards regularly encountered: Burns Cuts
Severity of Injury: Minor
Frequency: Frequent

PLAINTIFF'S EXHIBIT 38.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY JOB EVALUATION

R-25-x — Job No.: 12-1354
Location: B & C Factory—Finishing & Inspection — Typed: 3/12/64
Job Title: Inspector Class C — Effective:
Analyst: R. S. Callaway

DESCRIPTION:

Inspects a limited variety of ware such as, standard types of bulbs and cylinders for specified glass quality, shop, finishing, and dimensional defects, using a limited variety of gages and working according to standard procedures. This work includes duties such as:

Inspects ware visually for such defects as stones, seeds, chill wrinkles, shear marks, blisters, and for improper grinding, sandblasting, beading, lipping etc. Use gages such as go-no-go, contour, snap, dial indicator; and wall reading.

Maintains a record of quantity of ware rejected, and records readings for failure of ware to pass inspection. Wipes, wraps, and packs ware as instructed in accordance with standard procedures using wiping cloths, wrapping, paper, and packing materials. Discards defective ware into specified cullet chute, bin, conveyor, or can.

Plaintiff's Exhibit 38.

Approved by	*Date*	*Approved by*	*Date*
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ANALYSIS OF JOB

	Bench Mark Jobs Less Than This Job	Same As This Job	More Than This Job	Points
1. *Manual Effort* Handles under 15# such as: inspecting light ware.	—	50	48	60
2. *Visual Effort* Over 25% of shift: performing visual and dimensional inspections of glass products, continuously for regular types of defects.	1	50	22	75
3. *Manual Accuracy* No appreciable difficulty to meet tolerances such as: the use of gages, dials, rings, and plugs for inspection of various dimensions and visual defects.	—	50	57	125
4. *Manual Complexity* Gage and visually inspect ware for defects.	—	50	20	105
5. *Job Knowledge* Knowledge of ware defects, simple gages, and inspection techniques for a limited variety of ware, may obtain information from drawings.	—	50	57	115

Plaintiff's Exhibit 38.

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
6. *Responsibility for Problem Solving*				
Problems such as when defects in product exceed number and degree specified for item being inspected.	—	50	57	155
7. *Responsibility for Materials and/or Product*				
Ordinary care to prevent loss such as: 100 pieces of acceptable hand shop items/shift, rejected due to improper comparison of defects to limit samples or improper use of go no-go gages.	1	50	57	120
Special Loss Allowance				
8. *Responsibility for Equipment and/or Tools*				
Ordinary care to prevent loss from: damage to such equipment as gages due to improper use.	2	50	57	105
Special Investment Allowance				
9. *Responsibility for Direction Of Others*				
None.				0
10. *Surroundings*				
Normal factory conditions.	—	50	11	30
11. *Hazards*				
Frequent exposure to minor injuries such as: cuts from broken ware and burns from hot ware.	—	50	6	40
Total Points				930

Plaintiff's Exhibit 38.

HOURLY JOB ANALYSIS DATA SHEET

G-38 (rev.)
Location: B & C Factory—Fin. & Inap.
Analyst: R. S. Callaway
Date: 3/12/64
Job Title: Inspector Class C
Job Code No: 81-1353

Analyze the job—NOT the employee

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JOB CONDITIONS

Surroundings:

List elements regularly encountered: Intensity: Frequency: Normal factory conditions.

Hazards:

List hazards regularly encountered: cuts, burns
Severity of injury: minor
Frequency: frequent

PLAINTIFF'S EXHIBIT 39.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY JOB EVALUATION

R-25 Job No.: 4650
Location B & C Factory Typed: 10/15/63
Inspection & Finishing
Job Title: Inspector Class B Effective:
Analyst: N. M. Wisner

Inspects at various locations such as the discharge end of a lehr, conveyor, or on a table, a wide variety of items in clear and colored glasses (bulbs, cylinders, lens, fresnels, filters, tubing, dental reflectors, radomes, range top ware, and experimental ware) for glass and shop faults using, ware samples, drawings, product specifications, microscope, pocket comparitor, templates, according to an established procedure. Paek the ware following packing specifications. This work includes duties such as:

Inspects & gauges all hand and automatic made ware of all colors for glass, shop and finishing faults such as (stones, blisters, cord, wall, streak, slack blown, length cutoff, firepolish) using product specifications, ware samples, drawings, gauges, templates.

Measure ware strain on polarscope and color transmission on photometer to determine in specification ware. Wipes, wraps, and packs ware using packing specification.

Records select and faults on inspection form.

Plaintiff's Exhibit 39.

Approved by	*Date*	*Approved by*	*Date*
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ANALYSIS OF JOB

	Bench Mark Jobs			
	Less Than This	Same As Job	More Than	Points
1. *Manual Effort*				
Handles under 15# over 50% of the shift	53	57	51	60
2. *Visual Effort*				
Over 50% of shift continuously inspects all colored and/or clear glasses for shop faults and glass faults such as stones, seeds, blisters, cord, color, etc.	23	57	22	75
3. *Manual Accuracy*				
Use of gage to measure a variety of ware visually and dimensionally to .001".	50	57	20	135
4. *Manual Complexity*				
Inspects ware for all defects. Measures wall by manipulating ware in many different types of dial indicator gauges. Packs ware.	53	57	59	105
5. *Job Knowledge*				
Knowledge of specifications, gauges, inspection, and packing techniques, stress reading, color transmission, correct inspection lights.	50	57	20	120

Plaintiff's Exhibit 39.

	Bench Mark Jobs Less Than This Job	Same As This Job	More Than This Job	Points
6. *Responsibility for Problem Solving*				
Problem such as correct interpretation of product drawings and specifications on a wide variety of colored and clear glasses to reject or accept the ware based on defect found.	50	57	24	170
7. *Responsibility for Materials and/or Product*				
Constant care to prevent loss of up to 4 hours of production due to rejecting acceptable ware.	50	57	27	135
Special Loss Allowance				
8. *Responsibility for Equipment and/or Tools*				
Ordinary care to prevent loss from damage to such equipment as gauges through improper use.	52	57	31	105
Special Investment Allowance				
9. *Responsibility for Direction of Others*				
None.				0
10. *Surroundings*				
Normal factory conditions.	50	57	23	30
11. *Hazards*				
Occasional exposure to injuries such as cuts from broken glass and burns from hotware.	50	57	23	40
			Total Points	975

Plaintiff's Exhibit 39.

HOURLY JOB ANALYSIS DATA SHEET

Q-38 (rev.)
Location: B & C Factory
Analyst: N. M. Wisner
Date: 10/15/63
Job Title: Inspector Class B
Job Code No.: 81-4685

Analyze the job—NOT the employee

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JOB CONDITIONS

Surroundings:

List elements regularly encountered: Hot, noisy, cold
Intensity: normal.
Frequency: continuous

Hazards:

List hazards regularly encountered: breaking ware, hot ware, acid.
Severity of Injury: cuts, burns, acid burns
Frequency: occasionally.

PLAINTIFF'S EXHIBIT 40.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

HOURLY JOB DESCRIPTION

R-25-p Rev. 1/65	Job No.: 95-4672
Location: Pressware-several Departments	Typed: 12/14/63
Job Title: General Television Inspector	Effective:
Analyst: R. M. Searles	Revs. 11/6/65

DESCRIPTION:

Inspects Black and White and Color Television funnels, panels, necks and bulbs for all types of glass quality, shop, finishing and dimensional defects, comparing with tolerances established by verbal and written specifications, drawings, sketches and limit samples. This work includes such duties as:

Inspects ware visually for all defects such as stones, seeds, blister, chill, shear mark, cord, spew, checks (various), oil marks, and general face and surface quality and for all finishing defects such as cold seal, checked button seal, checked pin seal, defects of polish face quality, "velvetone" surface, edge grind and acid fortify etc.

Inspects ware for dimensional conformance to specifications using such equipment as electricator gauge, Moore Air Gage, flat pate, feeler gauge, go-no-go plug gauge, height contour gauge, calipers, electronic gauges etc.

Wipes and packs ware using cloths, paper and packing cartons and maintains records of pieces rejected by types and reasons for rejections.

Plaintiff's Exhibit 40.

Instruct lesser skilled inspector
Maintains good housekeeping conditions in working area.
Observes safety regulations and practices.

The above statement reflects the general details considered necessary to describe the principle functions of the job identified and shall not be construed as a detailed description of all of the work requirements that may be inherent in the job.

Approved By	*Date*	*Approved By*	*Date*
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.....	.....	.....	.....
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HOURLY JOB EVALUATION
R-25-E

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
1. *Manual Effort* Pickup, inspect, gauge various television parts, dispose of lehr rack etc. over 50% of shift.	49	54	6	85
2. *Visual Effort* Up to 25% of shift inspecting TV parts closely, reading gauges and visually checking defects. Newsprint level over 25%. Minute detail 5%-10% hold blister to .25 ± .005" using plastic gauges showing inspection sizes and comparator gauge where necessary.	51	50	27	75

Plaintiff's Exhibit 40.

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
3. *Manual Accuracy* Visual and mechanical measurement to .025′ ± .005″ for blisters etc. Keep polish quality within accepted limits. Pick up and set down approx. 20 lbs. of TV panel and gauge without bruising etc. Reaction time-normal.	50	20	67	135
4. *Manual Complexity* Uses variety of calipers and optical gauges to obtain dimensional readings and visual comparisions of defects with respect to limit samples and specifications.	21	53	48	105
5. *Job Knowledge* Knowledge of understanding of specifications and uses of gauges for all TV parts and bulbs. Knowledge of various types of defects and ability to determine whether in or out of specifications. Addition and subtraction and multiplication.		40	48	115
6. *Responsibility for Problem Solving* Correct interpretation of specifications. How to handle "border line" cases whether in or out of specifications.		50	51	155

Plaintiff's Exhibit 40.

	Bench Mark Jobs Less Than This	Same As Job	More Than	Points
7. *Responsibility for Materials and/or Product*				
Improper interpretation or applications or specifications can result in loss of truck load of ware (1600 panels) being rejected at customers. This means return reinspection etc.	50	53	46	135
Special Loss Allowance				
8. *Responsibility for Equipment and/or Tools*				
Careless handling of ware on Moore Air Gauge could knock it out of adjustment very easily. Gauge is checked against master once each hour. The ware loss could be ½ hours production.	15	53	17	105
Special Investment Allowance				
9. *Responsibility for Direction of Others*				
None				0
10. *Surroundings*				
Normal factory conditions	2	53	6	30
11. *Hazards*				
Possibility of minor (sometimes major) cuts occasionally.	50	53	6	40
Total Points				980

Plaintiff's Exhibit 40.

HOURLY JOB ANALYSIS DATA SHEET
Q-38(rev.)
Location: Pressware.
Analyst: R. M. Searless.
Date: 2/28/64.
Job Title: General Television Inspector.
Job Code No.: 92-4672.

Analyze the job—NOT the employee

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JOB CONDITIONS

Surroundings:

List elements regularly encountered: Heat.
Intensity: Normal.
Frequency: Continuous.

Hazards:

List hazards regularly encountered: Broken glass.
Severity of Injury: Cuts-minor to severe.
Frequency: Occasionally.

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PLAINTIFF'S EXHIBIT 42.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

A MANUAL
FOR
OCCUPATION EVALUATION

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Prepared by
B. C. GOULD
CHICAGO DIVISION

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Plaintiff's Exhibit 42.

GENERAL

TO ESTABLISH wage rates with proper differentials between occupations, it is first necessary to analyze the requirements of the work and the duties involved in each occupation, regardless of the qualifications of the personnel that may perform the work. When these requirements are known, a sound method of evaluation will determine their relative value and thus a basis for establishing equitable hourly wage rates.

The plan set forth in this manual is based on an analysis of seven prime elements of industrial occupations: General Schooling, Training Period, Manual Skill, Versatility, Job Knowledge, Responsibility, and Working Conditions. It should be stated here that factors such as productive ability, ingenuity and effort have been considered as personal attributes, and should be reflected in a measurement of individual performance to be rewarded, together with seniority, in accordance with each company's specific policy on such subjects.

The principle of evaluation used in this plan is unique in that all differentials are made from one common base—the prevailing unskilled labor rate of the vicinity and/or industry—thus providing a sound basis of establishing equitable occupation rates, and also a method of maintaining that equality as the entire structure of rates moves up or down with changing conditions in any vicinity.

Perhaps the most important factor to be considered in establishing wage rate differentials is the judgment required to analyze the various elements of the occupations. The procedure as described, together with the forms illustrated in this manual, provides a means of reducing the

possible error of personal judgment to a minimum, and also furnishes a permanent record of considerable value when a general change in wage rates becomes advisable.

When the common base has been established, and the problem of seniority, rate of output, etc., isolated as separate problems, all individuals who are familiar with its operation will arrive at the same value by the use of this plan.

Working Conditions

This element refers to the surrounding conditions and physical hazards to which employees are unavoidably subjected while performing the duties of an occupation.

Due to the fact that degree or extent of working conditions will vary greatly in different industries and plants within the same industry, it is not possible to predetermine a fixed value for each condition. However, working conditions have been classified into three groups, together with a description of various degrees in each with assigned values, to serve as a basis for evaluating local conditions at any plant.

The three classes of working conditions are: *Surrounding Conditions, Minor Hazards, and Major Hazards.* When rating an occupation on this element it is necessary to analyze the conditions and the extent to which they exist, and determine the value for each class accordingly. Should conditions exist which are not specified or should they exist to a degree not described, the values may be increased up to 100 in any one group.

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Plaintiff's Exhibit 42.

PROCEDURE

IT IS important to emphasize the fact that it is impossible to evaluate occupations properly until the various requisites have been accurately analyzed. Therefore, it is necessary that this analysis be prepared by persons who are thoroughly familiar with the operations and work of each occupation. A group consisting of the department foreman, personnel director, general foreman, and the "standards and methods" representative, has been found to be most logical and effective. Employees themselves may participate in the evaluation of their own occupations, if such a group is not too large.

DETAIL

1. The work sheet headed "Summary Sheet" provides a means of recording the requisite values determined for each occupation. The first step of the procedure, therefore, is to enter at the top of this sheet the identification of department, persons making analysis, and date, together with the unskilled labor rate of the vicinity. All of the occupations in the department to be evaluated should be identified and listed under the column headed "Occupation Description."

2. The next step is the preparation of the "Analysis Record" for each occupation. This form is designed to provide a record of the requirements of each occupation to obtain accurate analysis and evaluation of each element. The preparation of this record includes a summary of the duties involved and the degree or extent of each element necessary for satisfactory completion of the work

Plaintiff's Exhibit 42.

3. The next step is the grading of occupations in accordance with the requirement of each prime element. The values and descriptions for various degrees of each element are listed on the following pages. With the specifications of each occupation on the Analysis Record as reference, the selection of the proper value of each element is facilitated, especially when the gradings for a number of occupations are completed on each element separately. When the values for each occupation have been selected they are entered on the "Summary Sheet" and totaled.

4. The next step is converting the total values selected to a rating factor. This is done by reference to the "Conversion Chart" which consists of two scales and a curve. The horizontal arithemetic scale represents the total index value and the vertical logarithmic scale represents the rating factors. To determine the rating factor it is only necessary to locate the index total figure on the horizontal scale, its point of intersection with the curve, and to read the rating factor at the opposite point on the vertical scale.

5. The rating factor for each occupation is entered on the "Summary Sheet" and reflects the differentials between occupations. The basic wage rate is determined by the rating factor as a percentage increase over the unskilled labor rate of the vicinity.

6. *Example of Calculation*

Total Index Figure 600
Rating Factor 1.67
Common Labor Rate (Male) .....$0.50 per hr.
1.67 X .50 = .8357 Occupation Wage Rate .....$0.84 per hr.

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Plaintiff's Exhibit 42.

Occupation Evaluation

WORKING CONDITIONS

Value	*Degree*	*Description*
		Surrounding Conditions
		(Wet, Heat, Cold, Dust, Grease, Noise, Etc.)
10	Normal	For occupations on which the working conditions are normal, with the above typical disagreeable features existing only non-continuously or to a slight degree.
20	Poor	For occupations on which the working conditions are poor, with one or two of the above typical disagreeable features existing to a marked degree or several of them prevalent continuously.
40	Very Poor	For occupations on which the working conditions are poor, with several of the above typical disagreeable features existing continuously to a marked degree.
		Minor Hazards
		(Bruises, Cuts, Heavy Lifting, Fumes, Slippery Floors, Etc.)
15	Normal	For occupations on which one or two of the above typical minor hazards are frequently encountered in only a slight degree.

Plaintiff's Exhibit 42.

30	Considerable	For occupations on which several of the above typical minor hazards are frequently encountered in only a slight degree or one of them constantly encountered to a marked degree
60	Very High	For occupations on which several of the above typical minor hazards are constantly present or frequently encountered to a marked degree.

Major Hazards

(Machine, Chemicals, Gases, Body Injuries, Etc.)

25	Normal	For occupations on which one of the above typical major hazards is constantly present, with, however, the protection of normal safety measures.
50	Considerable	For occupations on which several of the above typical hazards exist continuously to a marked degree, with, however, the protection of normal safety measures.
100	Very High	For occupations on which several of the above typical hazards exist continuously to a marked degree, and on which the safety measures available cannot provide adequate protection.

• • •

Plaintiff's Exhibit 42.

OCCUPATION EVALUATION

SUMMARY SHEET

Dept. *Name* Labor Rate *Amount* Date *of evaluation*

Analysis by *Names of individuals preparing the evaluation*

No.	OCCUPATION DESCRIPTION	GEN'L SCHOOLING	TRAINING PERIOD	MANUAL SKILL	VERSATILITY	JOB KNOWLEDGE	RESPONSIBILITY	WORKING CONDITIONS	TOTAL INDEX	RATING FACTOR	BASE RATE-MILS	BASE RATE-PENNIES

Identify here each occupation to be evaluated

Enter here the values selected on each element for each occupation

Total values for each occupation.

Determine from conversion chart.

Calculated from rating factor and labor rate

PLAINTIFF'S EXHIBIT 47.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Katherine Kessler—Clock No. 2833
346 Oak Street
Corning, N. Y.

Service No.-5-8-28
Retired—June 1, 1947

LINE No.	*Date*	*Rate*	
1	9- 8-24	20¢	Employed as Helper by A. G. Wilcox
2	10-13-24	22¢	
3	11-17-24	24¢	
4	1-19-25	24¢	Finishing
5	3-12-25	24¢	Inspection
6	10-10-25	24¢	Quit to do housework
7	6-10-29	20¢	Re-employed as Helper by A. G. Wilcox
8	7- 1-29	22¢	
9	8-26-29	24¢	
10	10- 7-29	26¢	
11	10-28-29	28¢	
12	8- 4-30	28¢	Laid-off
13	10- 6-30	28¢	Re-employed as Helper by A. G. Wilcox
14	9- 6-32	25¢	General Decrease
15	7-31-33	30¢	" Increase
16	4-16-34	33¢	" "
17	3-28-37	40¢	" "
18	3- 2-41	42¢	Pyrex Inspection
19	3- 9-41	47¢	General Increase
20	9-28-41	52¢	Rate change
21	10-19-41	54¢	Inspector-Pyrex Finishing
22	1-11-43		Last date worked—Sick Leave —T & P—1947

PLAINTIFF'S EXHIBIT 48.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Helen M. Callanan—121 W. Fifth St.—Corning, N. Y.
Employed by CGW—11-15-15 to retirement 2-17-36

LINE No.	*Date*	*Rate*	
1	11-15-15	13¢	Employed as Inspector
2	5- 3-16	14½¢	
3	9-12-17	16¢	
4	3-27-18	18¢	
5	7- 3-18	20¢	Gen'l Increase
6	10- 9-18	23¢	" "
7	10- 6-19	25¢	
8	3-29-26	26¢	
9			Lv. of Absence to visit sister—7-2-27
10	9- 6-27	26¢	Re-employed by S. F. Cany as Helper
11	10-18-27		Last date worked—Illness
12			
13	4-25-28	26¢	Re-employed following illness
14	12- 9-29	28¢	
15	9- 6-32	27¢	Gen'l decrease
16	7-31-33	31¢	Gen'l Increase
17	4-16-34	34¢	" "
18			
19	2-13-36		Last date employed—Granted a pension at $3.00—week—effective 2-17-36
			Death—4-10-44

PLAINTIFF'S EXHIBIT 49.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Hattie Strong #880

Reemployed	11/15/20	as Inspector	@ 24¢ + / insp. piece rate ? per H.S.
"	11/21/21	"	22¢
?	7/12/22	?	28¢
Back to work	8/ 8/23	?	22¢
	6/29/24	?	30¢
Reemployed	9/18/29	as Insp.	30¢
	10/14/29		32¢
	Home		
Reemployed	6- 9-30	Helper	24¢
	Home		
Reemployed	12- 9-30	Insp.	24¢
"	3-16-31	Insp.	24¢
	Home		
Reemployed	5-11-31	Insp.	24¢
No decrease	9- 6-32	Insp.	24¢
GI	7-31-33		30¢
GI	12-25-33		32¢
GI	4-16-34		35¢
	1-18-37	Inspector	37¢
GI	3-28-37		44¢
GI	3- 9-41		49¢

PLAINTIFF'S EXHIBIT 52.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Carl D. Barney—
RD #4—Corning, N. Y.

Emp. No. 04480
Service Date—9-17-20
Retired 10-64

LINE No.	*Date*	*Rate*	
1	3- 2-26	36¢	Reemployed by A. G. Wilcox—As helper*
2	5-23-27	39¢	
3	8-29-27	42¢	
4	6-18-28	45¢	
5	4- 1-29	48¢	
6	6-17-29	53¢	Inspector
7	9- 6-32	48¢	General decrease
8	7-31-33	53¢	" Increase
9	4-15-34	58¢	" "
10	12- 2-35	61¢	Special Inspector
11	11-30-36	66¢	Inspector—Dept. 12
12	3-28-37	71¢	General Increase
13	3- 9-41	76¢	" "
14	9- 2-41	90¢	Work as Gaffer
15			
16			
17			

* Prior periods of employment in 1920-1921-1923-1924-1925 were as gatherer—hand bulbs. The intervening periods were lay-offs due to no work; other employment etc.

PLAINTIFF'S EXHIBIT 53.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

James H. Thompson
RD#1 Snvona N. Y.

Service No.—5-24-20
Retired 10-1-64

LINE No.	*Date*	*Rate*	
1	10-27-19	.275	Employed as Helper by L. West
2	3- 1-20	.30	
3	3- 1-20	.33	
4	4-15-20		Quit
5	5-24-20	.365+	Reemployed by W. Foshay
6	7-26-20	.41	
7	11- 1-20	.43	
8	3-21-21		Laid Off (was Inspector in Finishing)
9	4- 3-21	.40	General Change of Rate
10	1-30-22	.36	Reemployed as Helper by H. Harris
11	10- 2-22	.38	
12	1- 1-23	.40	
13	5-21-23	.42	
14	10-13-24	.45	
15	1- 4-26	.48	
16	12- 3-28		Tranferred to A. Wilcox
17	1-13-30	.53	Inspector #6
18	1- 1-32	.53	Transferred to M. Lewis #2 Inspector
19	2- 6-32	.48	General Decrease
20	7- 1-33	.53	General Increase
21	4-15-34	.58	" "
22	12- 7-36	.60	Inspector #12
23	3-28-37	.65	Pyrex Finishing #2
24	3- 9-41	.70	
25	3-28-41	.75	
26	11-30-41	.80	Cutter, Inspector, Lantion Filer

PLAINTIFF'S EXHIBIT 58.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEPOSITION OF SETH J. McKIBBIN.

[November 7, 1968.]

Appearances:

Isabelle R. Cappello, Esq., Deputy Counsel for Regional Litigation, Office of the Solicitor, Washington, D. C., appearing for the Plaintiff.

Francis V. La Ruffa, Esq., Chief Trial Attorney, 341 9th Ave., New York, New York, for the Plaintiff.

Scott F. Zimmerman, Esq., Reed, Smith, Shaw & McClay, 747 Union Trust Bldg., Pittsburgh, Pa., appearing for the Corning Glass Works.

• • •

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[7] Whereupon, SETH J. McKIBBIN, was called as a witness, and testified as follows:

Direct Examination by Mrs. Cappello:

• • •

[8] Q. What is your present title? A. Manager of Statistics and Surveys.

Q. And in connection with these duties, do you have general powers to exercise judgment and discretion in dealing with them? A. Yes.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. Mr. McKibbin, did you answer Plaintiff's first and second set of interrogatories on behalf of Corning Glass Works? A. I did.

Q. Mr. McKibbin, I would first like to question you about rates back in 1930. You are familiar with answers eight and nine the interrogatories? Would you like to look them over? A. Yes, please.

(Document handed to witness.)

Yes, I am familiar with these.

Q. And you are claiming, for purposes of this suit, that the time of day work is a working condition? A. Yes.

Q. Is Mr. E. W. Noble considered by Corning Glass to be an expert in Corning Glass's Job evaluation plans? [9] A. He is, in my opinion.

* * *

[13] A. To the best of my knowledge, there were no schedules as such.

Q. Were there male and female rates in 1930? A. There were rates being paid to men and women in 1930, yes.

Q. And they were on a different scale? A. Well, since there was no scale, I cannot testify that they were on a different scale.

Q. Were men and women on separate seniority lists in 1930? A. I am not equipped to answer this. It is my best understanding that there were no such things as seniority lists in 1930?

Q. Well, were women paid at lower rates than men in 1930 for inspection work? A. The record demonstrates this.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. In answer nine to the first set of interrogatories, you said that men on the night shift were diverted from other jobs to go onto inspection work. What were these other jobs? [14] A. Most of them were in the blowing room, a variety of jobs from helper to gatherer, according to the record that we have established.

Q. Gatherer? A. Yes.

Q. Would you please describe the duties of these jobs? A. Well, in general, it is my understanding that the helper in the blowing room was what we now call a shop boy, and in essence he was a low skilled part of the crew that formed glass by hand. The gatherer was a higher level job in the same team and his job was to gather the glass from the molten tank and begin the forming operation.

• • •

[17] Q. You state in answer nine that the inspection worker enjoyed less prestige than other activities on the night shift. Was it dirtier work? A. No, I think it was considered to be female work.

Q. The men wouldn't work at the female rate? A. I am not prepared to say that they wouldn't, they disliked it.

Q. What were the hours of steady night shift, day shift and afternoon shift in 1930, approximately? A. I am not sure what the day and afternoon shift was, specifically, it is my understanding that the night shift started at either ten, eleven, or twelve at night.

• • •

[18] Q. And what rate were the men assigned when they were put on inspection work in 1930? A. Fifty-three cents.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. And so they got an increase for going on inspection work? A. They received an increase in their base rate for going on inspection work.

Q. Why was that, Mr. McKibbin, do you know? A. It is my understanding that these men worked in the blowing room on an incentive operation, and while their rate of pay was, I believe, forty-eight cents, that their earned rate, if you will, was considerably above that, and that the increase in their base rate was necessary to encourage them to take this demeaning work.

Q. Demeaning because it was women? A. In their judgment, it was demeaning.

Q. Did there come a time when newly hired men were put on inspection work? A. I am sure it came along eventually. I am not sure when.

Q. And when the newly hired men came, were they [19] given the women's rate or the men's rate? A. I would assume that they were paid corresponding to the—to their training and experience, being paid to the men already performing the job.

* * *

Q. What kind of lifting and carrying did the men inspectors do in 1930? A. It is my understanding that the men inspectors on the night shift did their own utility work.

[32] Q. How long did Corning Glass Works have separate male and female hiring rates? A. For as long as I have been able to—Well, let me restate it, as long as I know.

Q. Would they have had them in 1946? [33] A. Yes.

Q. And in 1930? A. Yes.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. What was the minimum hiring rates for men and women on June 9, 1964, would they be the rates you have just stated? A. No, they would not.

Q. What would they be? A. According to Exhibit K-10 and K-11—

Mrs. Cappello: Off the record a minute.

(Discussion off the record.)

Mr. McKibbin: According to sheets 10 and 11 of Exhibit A, the male starting rate was $1.99, and—these should be pages 9 and 10 of Exhibit A, the male starting rate was $1.99, and the female starting rate was $1.89.

Mr. Zimmerman: What was the date?

Mr. McKibbin: Dated November 19, 1962.

By Mrs. Cappello:

Q. And I ask if these were the rates on June 9, 1964, and these were the rates? A. That's right.

Q. What were they on June 11, 1964? A. We no longer had minimum starting rates on a sex basis, it was dependent upon the job classification the employee was hired into.

• • •

[36] Q. Is the revised hourly rate schedule furnished in answer three to the first set of interrogatories the same as the eleven sheet of Exhibit A? A. Yes.

Q. And this revised hourly rate schedule went into effect on June 11, 1964? A. It did.

Q. Mr. McKibbin, I want you to explain for us how the rates for men and women inspectors were effected by the change from separate male and female rate schedules that

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

had been [37] used up to June 11, 1964 to the one revised rate schedule, and I would like you to use in this connection Exhibit A, B and C to your supplemental answers to our second set of interrogatories, and the eleventh sheet of Exhibit A to this deposition.

• • •

Q. Mr. McKibbin, I am going to hand you Exhibit A to your supplemental answer 22, Exhibit C to supplemental answer 23 and Exhibit B to supplemental answer 22.

Using these Exhibits, plus sheet eleven of Exhibit A to your deposition, please explain how the rates for men and women inspectors in class C, class B, T. V. and general T. V. inspection work were effected by the change from separate male and female rate schedules that had been used up until [38] June 11 to the one revised hourly rate schedule? A. Let me just get organized here, because I'm not sure what you want.

• • •

Mr. McKibbin: Looking at the female schedule dated November 19, 1962 I believe the class C female inspectors were a group 3, with job evaluation .215 to .235 with a rate range running from $1.89 to $1.97½.

On the schedule that became effective June 11, 1964, they were classified as "new group" 1, and their rate of pay was $1.97½. Any female employee who was—whose rate of pay on June 10, 1964 was $1.89, $1.93½ or $1.95½ received an immediate adjustment effective June 11, 1964 to the rate of $1.97½.

• • •

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Female class B inspectors, I believe were group 6, under the rate schedule effective November 19, 1962, and the rate of pay ran from $1.89 through $2.05½. On June 11, pursuant to the schedule that was made effective that date, any employee, any class B inspector employee, female, who was receiving less than $1.97½ received an immediate increase to [39] $1.97½, and employees who were rated at $1.99½ were increased to $2.01½, and those who were rated $2.05½ remained the same.

By Mrs. Cappello: When you say, "Class B", you also referred to general T. V.?

A. Anything that I have said about the class B inspectors would be equally applicable to the general T. V.—

Q. And anything that you have said about class C would be applicable to T. V. inspector? A. Yes, on the day shifts, as in regards to the men, on the night shift, June 10, 1964 a class C night inspector or a T. V. night inspector was in old group 2, and the rates ran from—their job evaluation points ran from 165 points to 235 points and their individual hourly rates of pay ran from $1.99 to $2.13½.

On June 11 their rates would have been adjusted, any night class C inspector with a rate of $1.99 would have been increased to $2.01½. An employee at $2.03½ would have been increased to $2.05½. An employee at $2.08½ would have been increased to $2.09½, and those at $2.13½ had no rate change.

The class B night inspectors—

Q. And general T. V.? A. And general T. V., night inspectors were in old group 4, which is a point value run-

ning from 300 to 350 points, and their rates ran from $1.99 to $2.23½. Similarly any [40] employee on one of those classifications who was rated at $1.99 would have been increased to $2.01½. An employee at $2.03½ would have been increased to $2.05½. One at $2.08½ would have been increased to $2.09½, and those at $2.13½—$2.18½ and $2.23½ would not have had a rate adjustment.

Q. Would you now explain the hourly group number conversion table, and for what purposes that was used? A. This table shows—this table shows that we converted old group numbers to new group numbers by combining old female group numbers 1, 2, and 3-A into new group number 1. Old female group numbers 4 and 5-A into new group 2. Old female group number 6-A into new group number 3. Old female group number 1 and female group number 7-A into group 4, and old male group number 2 and old female group number 8-A to new group number 5, and so forth.

Q. Does this conversion table indicate that no men went into group numbers 1, 2, and 3? A. On June 11 I believe that is so.

Q. What does the irregular schedule mean? A. The irregular schedule applies in certain class type activities, in which the lower end of the rate range of the higher job which overlapped the upper end of the lower level job was eliminated, and this may be the case in class-B and C inspectors. I am not sure.

Q. Why were decimal points and the letter "A" in the [41] female column but there were none in the male column? A. There could well have been decimals in the male column, and there would be—the "A" designation

under the female groupings under the old program was aware of disinguishing between the two schedules. It was an administrative thing, we frequently refer to them as A's or as female schedules.

Q. So all the men inspectors went into GP numbers 5 and 7 on the revised hourly rate schedule on June 11? A. All the male inspectors being on the night shift, that is true.

Q. And all of the women inspectors went into GP number 1 or 3 on the revised schedule on June 11, 1964? A. Yes.

Q. In answer 20 to our first set of interrogatories, you told us that the job evaluation points were the same on all shifts for class C, B, T. V. and general T. V. inspectors. Under both your SJ and H plan and your CGW plan, the latter plan rating effort and the SJH plan not rating effort— A. That is my recollection.

Q. Would you like to see that answer?

(Document handed to witness.)

A. Yes.

Q. This being so, Mr. McKibbin, why didn't the men and women go into the same wage group when you converted them to one rate schedule? [42] A. Well, I think this is what happened up in the history of thirty-some years worth of industrial experience and negotiating with the Union for some part of that time. I think that is the answer in summary. This is a whole wealth of background.

Q. When you went to the one revised hourly rate schedule, did you preserve the rates that were in the male and female schedules? A. If I understand your question, no. There were changes.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. Well, at the top of the—Why were there changes? A. Well, we eliminated all of the rates below $1.97½, as a for instance—

Q. Employees doing class C, class B, T. V. and general T. V. inspection work who were at the maximum range, were their rates changed when you went from the male and female schedule to the revised hourly rate schedule? A. I believe not.

Q. So their rates were preserved in the conversion process? A. At the maximum. Yes.

• • •

[50] Q. Has this differential between utility workers and inspectors been about the same since 1964? A. Approximately.

Q. Does the base hourly rate of a utility worker change depending on the shift he works? A. Not his base hourly rate.

Q. Does this result in a utility worker getting more then inspectors on the day and afternoon shift and less on the night shift? A. Would you restate that, please?

Q. Does this result in a utility worker on the day and afternoon shift assisting an inspector getting more than the inspector? A. Yes, on the day shift?

Q. When the same utility worker goes onto the night shift, he gets less than the inspector? A. In base hourly rates, is that your question?

Q. Yes. A. Yes.

Q. From your experience in the industrial relations [51] department, is there a sound economical reason for such a situation? A. Yes, ma'am.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. What is it? A. Well, this is inherent in the revolution of the rates of pay that Corning Glass Works currently pays, and as we discussed earlier when the night shift initially started we had to pay a premium and, I am using my term now, in order to induce people to take on this unsavory work and that rate has persisted down through the years with the union's knowledge and consent. It has been a negotiable item.

Q. And the men just wouldn't work at the women's rate? A. Yes.

• • •

[52] Is there a plant-wide night shift differential that is paid for steady night shift work? A. There is a steady night shift differential negotiated as part of the contract.

Q. What is the purpose of such a night shift differential? [53] A. Well, I am sure it is different things in the minds of different people, but it is a generalization, I say it was agreed upon the amount of compensation to be paid, in addition to the individuals hourly rate for the undesirable hours of work.

Q. And for the inconvenience? A. For all aspects of those undersirable hours.

Q. Have the men that do inspection work on the night shift also gotten any plant wide night shift differential that was negotiated— A. To the best of my knowledge and belief, yes.

Q. Do any other men on steady night shift receive a a higher base hourly rate than those doing the same job on other shifts? A. Would you restate that, please.

Q. Do any other men on steady night shift receive a higher base hourly rate than those that do the same work

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

on the other two shifts? A. To the best of my knowledge and belief there are no other people currently receiving a higher base rate on the day shift.

Q. Has there ever been? A. As—

Q. Would you explain that action, please. A. Well, years ago whenever we needed the historical [54] female activities performed on the night shift as inspection, the only way we could get it done was to get a man to do it, and historically our experience was that we had to pay a premium to get a man to do it.

Q. And I believe you said that utility workers get the same base hourly rate on all shifts. Is that correct? A. Yes.

Q. Do you have any inspectors who work steady on the second shift? A. I am not sure, currently. We presumably have had at some point in time.

Q. What are the hours of the second shift, are they— A. I am not sure what you mean by the "second shift".

Q. The afternoon shift. A. The afternoon shift normally starts at 2:00 o'clock p.m., 3:00 p.m., or 4:00 p.m.

Q. And last until what hour? A. For an eight hour period.

Q. Do you pay a plant-wide shift differential for the afternoon? A. We have a six cent shift differential for shifts starting at 2:00, 3:00 and 4:00 o'clock, as detailed in the contract.

Q. Aren't the second shift hours less desirable and convenient than the day shift hours? [55] A. I am not prepared to pass a judgment on that, except as it pertains to me.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

Q. You may answer that question as it pertains to you, then. A. I have worked shifts, and to me the most disagreeable hours possibly would be the night shifts, steady night shifts, in my personal opinion.

Q. My question was whether the afternoon shift hours, lasting until midnight, aren't less desirable and convenient than the day shift hours? A. I am sorry. Presumably, yes.

Q. Do second shift inspectors get the same base hourly rate as the—Do the afternoon shift inspectors get the same base hourly rate as the day shift inspectors? A. Yes.

Q. Why don't they get a higher base hourly rate like the third shift if it is to compensate for—let's see—less desirable and inconvenient working hours? A. I suppose the right way to answer that is that we have never negotiated such an understanding.

• • •

[57] Q. Well, you say that the factor other than sex accounts for the differential in base hourly rates between the men and the women is due to less desirable hours of work and inconvenience of working steady nights, but you don't apply that throughout the plant; is that correct?

Mr. Zimmerman: I don't know what you mean, you don't apply that—You don't apply what?

Mrs. Cappello: Well, with other third shift employees, who do the same work, they all get the same base hourly rate.

Mr. Zimmerman: First of all, are there—the question is based on the same assumption that you made in the last question, you say are there other employees who worked different hours and do the same work.

Mrs. Cappello: All right. I will rephrase that question.

By Mrs. Cappello:

Q. Are there employees working a third shift, performing the same work as employees on the day and afternoon shift? [58] A. On a steady night basis?

Q. Yes. A. I believe there are.

Q. Do they all get the same base hourly rate except for inspectors? A. I believe so.

Q. Now, I don't understand how you can say that that differential, as between the inspectors is due to less desirable hours of work, and inconvenience of steady nights, since you don't compensate other employees in that manner. A. Well, as I have tried—

Mr. Zimmerman: Is that a question or a statement?

By Mrs. Cappello:

Q. Do you agree with that, Mr. McKibbin? A. Well, I think you are losing the sight of the historical derivation of the rates that we pay inspectors.

Q. And that historical reason is that the men wouldn't work for what the women were getting; is that right? A. Yes.

Q. And isn't that a fact—

Mr. Zimmerman: Well, just a second now, isn't there more to it than that, Mr. McKibbin?

Mr. McKibbin: Among other things, that is true.

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

By Mrs. Cappello:

Q. What are these other things? [59] A. Well as we have discussed earlier, the loss of incentive income, the loss of opportunity to work overtime, the disagreeable hours and so forth.

• • •

[76] By Mrs. Cappello:

Q. Were the men inspectors assigned to do inspection work on the day and afternoon shift on a temporary basis? A. Would you restate that, please?

Q. Were the men inspectors assigned to do inspection work on the day and afternoon shifts on a temporary basis?

Mr. Zimmerman: At what point in time are you speaking?

Mrs. Cappello: After the men were able to get on to the day and afternoon shifts.

The Witness: Not to the best of my knowledge.

By Mrs. Cappello:

Q. Those were permanent assignments? A. As permanent as any of our transactions are.

Q. What period of time does exhibit I cover?

• • •

[77] Q. What period of time does exhibit I cover? A. From June 1, 1966, to June 2, 1968.

• • •

[87] Q. You refer, in several of your answers, to past practices under your contracts. In 1944, before the past practice clause was first enacted, what were the rates of the men and women inspectors? A. I think you need to

Plaintiff's Exhibit 58.
Deposition of Seth J. McKibbin—Direct.

understand that there was no schedule at that time. We didn't have the same type of business management that we have now, so as a result of the necessity to establish some of this, I have gone back and reconstructed a composite series of rates that were applicable to men and women inspectors during the wartime period.

Now, quite frankly, some of these records I couldn't find, there is a blank spot in here, for example—

• • •

[88] Q. Will you explain what those rates were, Mr. McKibbin, as best you know? A. Well, as best I have been able to reconstruct them, and if I may take a period time, here, as of 7-9-44, I was able to establish that there were men classified as inspectors, Class B, with a hiring rate of $.60, and a maximum of $.85, and men classified as inspector, Class A, at $.90. Women were classified in four different classifications, the lowest of which was inspector—standard ability, with a hiring rate of $.50, and a maximum $.59. Above that was an inspector above standard ability, which had a single rate of $.61, and above that was an inspector-superior ability, that was paid $.63, and there was an inspector-supervisor, outstanding ability, that receive $.65 per hour.

Q. Were these the rates, in effect, then, when the first union contract was signed, to the best of your knowledge? A. These were in effect as of July 9, 1944, which would have been after the contract was signed.

Q. Were they different before the contract was signed? A. Yes. On 7-9-44, there was a general increase, which incorporated in an attendance bonus into the rate, it was

the result of negotiations and had to have the prior approval of the War Labor Board, and it was ultimately approved and negotiated, and it was implemented on July 9, 1944.

• • •

[97] CROSS EXAMINATION by Mr. Zimmerman:

Q. Mr. McKibbin, earlier you testified that women were paid at lower rates than men for inspection work in 1930. Were there any differences in the inspection work performed by the women in 1930 as opposed to that performed by the men? A. Yes, there was a substantial difference, as I understand it.

Q. Well, can you explain what you mean by that? A. Yes. The women, at that time, did no lifting, as such. They had male helpers on the two day shifts who did the heavy work for the female inspectors on those two shifts. On the night shift the male helpers did not exist, and the men did their own lifting, which the women had help on in the day shifts.

Q. So I gather, in addition to the fact that the men worked different hours, that is, they worked the steady night shift, there was also a difference in work? A. Yes, that is my understanding.

• • •

PLAINTIFF'S EXHIBIT 68-A.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Rates Changes—Oct. 21, 1946

EXHIBIT III

FEMALE SCHEDULE FOR DERIVING RATE RANGES AND STEPS

Corning, New York Plants

Wage Group No.	Job Evaluation Points	Trainee Hourly Starting Rate	Intermediate Rate Step	Min. Rate of Rate Range	Rate Steps			Max. Rate of Rate Range
1	Up to 160	.60						.65
2	165-210	.60					.65	.67
3	215-235	.60				.65	.67	.69
4	240-265	.60			.65	.67	.69	.71
5	270-295	.60		.65	.67	.69	.71	.73
6	300-345	.60	.65	.67	.69	.71	.73	.77
7	350-395	.65	.67	.69	.71	.73	.77	.81
8	400-435	.65	.69	.71	.73	.77	.81	.85
9	440-475	.67	.71	.73	.77	.81	.85	.89
10	480-515	.69	.73	.77	.81	.85	.89	.93
11	520-555	.71	.77	.82	.85	.89	.93	.97
12	560-585	.73	.81	.85	.89	.93	.97	1.01
13	590-615	.77	.85	.89	.93	.97	1.01	1.05

Effective January 6, 1946 (Original Schedule Plus 8¢)

PLAINTIFF'S EXHIBIT 68-B.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Rate Change—Oct. 21, 1946

EXHIBIT IV

MALE SCHEDULE FOR DERIVING RATE RANGES AND STEPS

Corning, New York Plants

Effective January 6, 1946 (Original Schedule Plus 10¢)

Wage Group No.	Job Evaluation Points	Trainee Hourly Starting Rate	Intermediate Rate Step	Min. Rate of Rate Range	Rate Steps			Max. Rate of Rate Range
1	Up to 160	.70					.75	.80
2	165-235	.70				.75	.80	.85
3	240-295	.70			.75	.80	.85	.90
4	300-350	.70		.75	.80	.85	.90	.95
5	355-395	.70		.80	.85	.90	.95	1.00
6	400-440	.70	.75	.85	.90	.95	1.00	1.05
7	445-485	.75	.80	.90	.95	1.00	1.05	1.10
8	490-535	.80	.85	.95	1.00	1.05	1.10	1.15
9	540-570	.85	.90	1.00	1.05	1.10	1.15	1.20
10	575-600	.90	.95	1.05	1.10	1.15	1.20	1.25
11	605-630	.95	1.00	1.10	1.15	1.20	1.25	1.30
12	635-660	1.00	1.05	1.15	1.20	1.25	1.30	1.35
13	665-685	1.05	1.10	1.20	1.25	1.30	1.35	1.40
14	690-710	1.10	1.15	1.25	1.30	1.35	1.40	1.45
15	715-730	1.15	1.20	1.30	1.35	1.40	1.45	1.50
16	735-755	1.20	1.25	1.35	1.40	1.45	1.50	1.56
17	760-775	1.25	1.30	1.40	1.45	1.50	1.56	1.62
18	780-795	1.30	1.35	1.45	1.50	1.56	1.62	1.68
19	800-810	1.35	1.40	1.50	1.56	1.62	1.68	1.74
20	815-825	1.40	1.45	1.56	1.62	1.68	1.74	1.81
21	830-845	1.45	1.50	1.62	1.68	1.74	1.81	1.88
22	850-860	1.50	1.56	1.68	1.74	1.81	1.88	1.95
23	865-875	1.56	1.62	1.74	1.81	1.88	1.95	2.02
24	880-890	1.62	1.68	1.81	1.88	1.95	2.02	2.10
25	895-905	1.68	1.74	1.88	1.95	2.02	2.10	2.18
26	910-920	1.74	1.81	1.95	2.02	2.10	2.18	2.26

PLAINTIFF'S EXHIBIT 69.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

CORNING GLASS WORKS

REVISED HOURLY RATE SCHEDULE

CORNING, NEW YORK

GP. No.	RATE SCHEDULE					
NEW	*Trainee Min.*		*2nd*	*Mid*	*4th*	*Max.*
1						1.975
2					1.975(a)	2.015
3				1.975(a)	2.015(b)	2.055
4				2.015(a)	2.055(b)	2.095
5			2.015(a)	2.055(b)	2.095	2.135(c)
6		2.015(a)	2.055(b)	2.095	2.135	2.185
7	2.015(a)	2.055(b)	2.095	2.135	2.185	2.235
8	2.015(a)	2.095	2.135	2.185	2.235	2.285
9	2.015(a)	2.135	2.185	2.235	2.285	2.345
10	2.055(b)	2.185	2.235	2.285	2.345	2.40
11	2.095	2.235	2.285	2.345	2.40	2.475
12	2.135	2.285	2.345	2.40	2.475	2.545
13	2.185	2.345	2.40	2.475	2.545	2.63
14	2.235	2.40	2.475	2.545	2.63	2.69
15	2.285	2.475	2.545	2.63	2.69	2.765
16	2.345	2.545	2.63	2.69	2.765	2.845
17	2.40	2.63	2.69	2.765	2.845	2.925
18	2.475	2.69	2.765	2.845	2.925	2.995
19	2.545	2.765	2.845	2.925	2.995	3.085
20	2.63	2.845	2.925	2.995	3.085	3.18
21	2.69	2.925	2.995	3.085	3.18	3.275
22	2.765	2.995	3.085	3.18	3.275	3.36
23	2.845	3.085	3.18	3.275	3.36	3.465
24	2.925	3.18	3.275	3.36	3.465	3.565
25	2.995	3.275	3.36	3.465	3.565	3.675
26	3.085	3.36	3.465	3.565	3.675	3.785
27	3.18	3.465	3.565	3.675	3.785	3.90

Plaintiff's Exhibit 69.

(a) Time progression increase due after one (1) month at this rate.

(b) Time progression increase due after three (3) months at this rate.

(c) On transfer to an equal or lower rated job:

1. An employe in or below this rate range will receive credit for service toward his six (6) month control period for merit progression.

2. An employe at or above this rate should not be reduced below it except to the highest rate in the rate range.

/pb

June 10, 1964

PLAINTIFF'S EXHIBIT 76-20.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

AGREEMENT

Between

CORNING GLASS WORKS

and the

AMERICAN FLINT GLASS WORKERS' UNION
OF NORTH AMERICA
A. F. L.-C. I. O.
Including Local Union
No. 1000

January 9, 1964

• • •

ARTICLE XII SHIFT DIFFERENTIAL

SECTION 1. Workers employed on shifts starting at 2:00 p.m., 3:00 p.m., and 4:00 p.m., will be paid $0.06 per hour as a premium for such work.

SECTION 2. Workers employed on non-rotating shifts starting at 10:00 p.m., 11:00 p.m. and Midnight will be paid $0.12 per hour as a premium for such work.

SECTION 3. Workers employed on rotating shifts starting at 10:00 p.m., 11:00 p.m., and Midnight will be paid $0.08 per hour as a premium for such work.

• • •

PLAINTIFF'S EXHIBIT 82.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

To:
Mr. W. J. Bradshaw
Mr. R. M. Dorwart
Mr. F. W. Gillen
Mr. D. S. Hall
Mr. P. A. Lang
Mr. J. L. Rhodes
Mr. S. Somers
Mr. G. R. Yeakey

From: Charles A Francik

May 4, 1964

The attached material, Exhibit I, was used for a presentation to Industrial Engineers in the Corning area concerning the Equal Pay Act and its implications. At the same time, Exhibits II and III were distributed to serve as guidance in determining possible Equal Pay Act violations and providing a method by which these could be recorded. Any possible violations were then to be referred back to this office so that there could be an understanding of the Corporation's possible total liability.

In view of the time problem, it is not possible to invite the Industrial Engineers from the branch plants into Corning. As a substitute, it would be wise if you, your Industrial Engineer, and Personnel Supervisor reviewed the attached material (referring any questions which you might have to me) and make a comparison of female to male jobs in your own plant. Once having developed this

information, I would appreciate it if you would record the possible violations and send them to me so that we are better aware of problems in each plant.

The material is as uncomplicated as we can make it at this time, but there are plenty of areas where misunderstanding might develop. If you have any questions, please contact me and we will do our best to assist you.

/caw
Atts.

• • •

EFFECTIVE DATE—EQUAL PAY ACT

S J & H PLANTS		CGW EVALUATION PLANTS		RANDOM RATE PLANTS	
All Corning Plants Bradford Parkersburg Albion Greenville Corning Packaging Co.	6/11/64	Martinsburg Greencastle Danville, Va. Raleigh Buckhannon Penndell	6/11/64	Charleroi Frederick	6/11/64
Wellsboro	1/20/65	Paden City	5/31/65	Cohart-Louisville	12/4/64
Harrodsburg	2/ 1/65				
Muskogee	3/ 1/65				
Central Falls	6/11/65				
Danville, Ky.	6/11/65				

WHERE IS OUR PROBLEM?

Each plant should examine its local situation to develop compliance problems.

By Plants:

Plants using S J & H Evaluation System Discriminatory Wage schedules.

Plants using negotiated rates.

Plaintiff's Exhibit 82.

By Payroll:

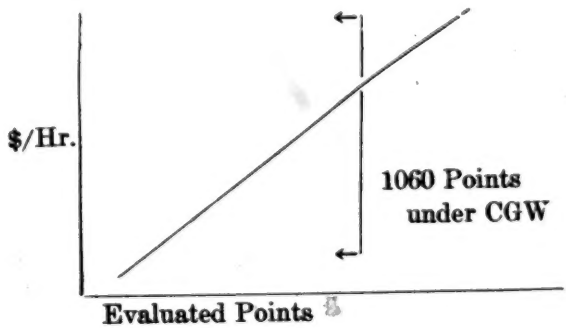
1. Principally Hourly Payroll.
2. Weekly Payroll also affected—look out for:
   a. Quality Control and Lab. Testing where they are on the Weekly Payroll.
   b. "Sleepers"—where job descriptions for male incumbents may contain overstatements of the functions.

By Kind of Work:

Usually low physical effort; look out for:

1. Inspection
2. Quality Control
3. Machine loading and unloading
4. Material transfer
5. Packing
6. Tool & parts supply storage
7. Custodial

By Job Level:



PLAINTIFF'S EXHIBIT 91.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEPOSITION OF ARTHUR J. AGETT

[November 7, 1968]

Appearances:

Mrs. Isabelle R. Cappello, Deputy Counsel for Regional Litigation, U. S. Department of Labor, Washington, D. C., on behalf of Plaintiff.

Francis V. LaRuffa, Esq., Chief Trial Attorney, U. S. Department of Labor, 341-9th Avenue, New York, N. Y., on behalf of Plaintiff.

Scott F. Zimmerman, Esq., Reed, Smith, Shaw and McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania, on behalf of Defendant.

• • •

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[3] ARTHUR J. AGETT, was called as a witness and testified as follows:

Examination by Mrs. Cappello:

• • •

[4] Q. During your time in Pressware as Assistant to Plant Manager and Plant Manager in 1942-1945, were they operating a third shift upon which inspectors worked? A. Yes, this was a continuous production operation down there, twenty-four hours a day, seven days a week.

Q. These were the World War II years? A. Yes.

Plaintiff's Exhibit 91.
Deposition of Arthur J. Agett—Direct.

Q. And you have been named as the person qualified to testify as to working conditions and rates during World War II? A. Well, in respect to rates—

Q. Well, working conditions. A. Okay.

Q. Did women inspectors work on the night shift during World War II? A. Yes, as I recall.

Q. Did they get the same base hourly rate as the women on the other shifts? A. Yes.

[5] Q. If this is so, how—since it is so, how were they compensated for working less desirable and inconvenient hours? A. I don't recall that we had any shift differential at that time, and I believe they were not compensated for that purpose, or for that condition.

Q. Were the utility workers on the night shift at this time? A. Does your question relate to, in respect to the inspection work, because you see there are various other operations going on in the plant.

Q. Did the utility workers serve as inspectors on the night shift during this period? A. No, not to my knowledge.

Q. But there were utility workers on the night shift? A. There might have been, I don't recall specifically. There were no utility workers in the inspection department of the night shift, as I recall.

Q. Why was this? A. Well, we used utility workers on the day shift to do lifting and trucking, the work that we didn't expect women to do. This was not necessary on the night shift where we had night inspectors. I don't think we manned any night shifts entirely by women, so that the men would do the moving of boxes, the trucking of ware away, the positioning of skids and boxes adjacent to the inspection area where the women were inspecting?

• • •

PLAINTIFF'S EXHIBIT 93.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

DEPOSITION OF EARLE LEWIS

[November 7, 1968.]

Appearances:

Mrs. Isabelle R. Cappello, Deputy Counsel for Regional Litigation, U. S. Department of Labor, Washington, D. C., on behalf of Plaintiff.

Francis V. La Ruffa, Esq., Chief Trial Attorney, U. S. Department of Labor, 341-9th Avenue, New York, N. Y., on behalf of Plaintiff.

Scott F. Zimmerman, Esq., Reed, Smith, Shaw and McClay, 747 Union Trust Building, Pittsburgh, Pennsylvania, on behalf of Defendant.

PROCEEDINGS

Whereupon,

EARLE LEWIS was called as a witness and testified as follows:

Examination by Mrs. Cappello:

Q. Are you employed by Corning Glass Works, Mr. Lewis? A. Yes, I am.

Q. How long have you been employed by Corning? A. Since December, 1943.

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

Q. In what capacities have you worked, and what were the approximate dates on which you worked? A. I was working with the Cost Office on special assignments—Central Cost System at the time, for approximately three years; and then I worked as a supervisor of time and cost in "A" factory until 1955; and I went to work in General Industrial Engineering as a Weights Administrator until 1967; and I became a Supervisor of Employment, and non-Exempt Pensions, which is basically a staff position in the General Industrial Engineering Division.

Q. Mr. Lewis, you have been named as the person qualified to testify as to the procedures for posting vacancies. A. Thank you.

Q. Would you please explain those procedures? A. In the first place, vacancy occurs when there is no person who is currently employed has a right to the classification. The procedure is to—for the plant who meets or has a vacancy, to define the job and the wage, send it to the central Personnel Office, where it is verified as being an opening, or a vacancy. It is posted in the plant that needs the person and the main plant Personnel Office—or in the union office window.

Mr. Zimmerman: Let me inject a comment, if I may. Are all jobs posted, Mr. Lewis?

The Witness: No, they are not.

Mr. Zimmerman: All right, just so that you know we are not talking about all jobs.

Please go on.

Mr. LaRuffa: Well, I think you were referring—you had qualified your answer that these are vacancies occurring or positions that don't exist, only—

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

The Witness: If persons do not have a classification.

Mr. LaRuffa: That's right, classification.

Mr. Zimmerman: Off the record.

(Discussion off the record.)

Mr. Zimmerman: On the record.

Mr. LaRuffa: Just give us the situation relative to posting of these positions, those that you do have to post, and those that you don't and why you don't, and why you do.

[5] The Witness: By negotiations with the union, there are certain jobs that are entry jobs and these jobs do not have to be posted. They may be filled from the street when there are openings or they may be filled by regression of persons or they may be filled by a new word, transfer request.

By Mrs. Cappello (continuing):

Q. Are Class B and general TV jobs posted? A. They are not.

Q. Then how can anyone bid on one of these jobs? A. They fill out what is known as a transfer request. They request the plant, the shift and the job that they would like.

Q. And you consider that bidding on a job? A. This is the equivalent, yes, and they are recognized before people are hired from the streets, or who are put on the job under voluntary procedures.

Mr. LaRuffa: This is a totally voluntary procedure that is followed by Corning?

The Witness: Yes.

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

Mr. LaRuffa: Not at as a result of union negotiations?

The Witness: They have agreed to all of our procedures, yes, sir.

Mr. LaRuffa: When did this go into effect, Mr. Lewis?

[6] The Witness: This I don't know. I have not been in the business that long.

Mr. Zimmerman: Perhaps you can give us the earliest point at which you know it was in effect?

The Witness: Around 1950, I would say.

By Mrs. Cappello (continuing):

Q. Do you know how many women have requested transfers to the night shift—any Class C, B, TV or general TV inspectors who have requested transfers to the night shift?

A. May I read—

Mr. Zimmerman: This is some work that Mr. Lewis did pursuant to the request that I made after you suggested it.

The Witness: How would you like the presentation?

By Mrs. Cappello (continuing):

Q. Well, I just want to know how many women have requested transfers to the night shift?

Mr. Zimmerman: You have it broken by time periods?

The Witness: Right, in my plans.

• • •

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

[7] By Mrs. Cappello:

Q. Have many of these requests for the transfers of a night shift been because the women wanted the higher rate?

Mr. Zimmerman: If you know why the women put in the request.

The Witness: I do not know.

By Mrs. Cappello:

Q. I believe it appears on those transfer requests. A. They are on there, yes. I don't know what all of the reasons are.

Q. Would you like to look through them? A. I would have to to give you an answer.

Q. Would you look through them to see if they requested the night shift because they wanted the higher rate?

Mr. Lewis, we are just talking about night shift inspection jobs in the Class C, Class B, TV and general TV. A. This is all this is.

Q. Would you like to stipulate—

[8] Mr. Zimmerman: Yes, we will stipulate that among those women who requested transfers to the night shift during the period of time that Mr. Lewis has testified about, that some did so because they desired to receive a higher rate of pay at night.

• •

Q. Do you know the number who requested night jobs in those classifications?

• • •

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

[10] By Mrs. Cappello (continuing):

Q. Mr. Lewis, would you continue with your testimony, please. A. Yes.

I would like to explain the terms which we are going to use. We use the word "assign" for a person who actually was given the job that they requested. We will use the word "out-dated" to indicate that the person either left their current position and no longer could be considered for this job, or that the six months that is stated on the application expired. We will use the word "refused" for any person who was given the opportunity and they turned it down when we were going to give it to them.

I will take this by years. Women who requested night work in 1966 were fifteen. Four of them were given the job, assigned, eleven out-dated. There were two women in 1966 who requested any shift. When given the opportunity, they refused. 1967, there were sixty-one women requested night work; assigned, thirty-four; out-dated, twenty-two; and refused, five. There were fifty-three women in 1967 who requested any shift. There were four assigned, twenty-nine out-dated, and twenty refused. 1968, to date, there were [11] fifty-two women requested work, there were thirty-four assigned, ten out-dated, eight refused. There was likewise, twenty-seven women who requested any shift, there were seven assigned, nine out-dated, and eleven refused.

Q. Mr. Lewis, would a transfer request become out-dated if, within six months no vacancy had occurred? A. That is correct.

Mr. LaRuffa: This is with respect to women, the figures that you have given me?

Plaintiff's Exhibit 93.
Deposition of Earle Lewis—Direct.

The Witness: Every thing is in respect to women.

Mr. LaRuffa: Are there any records similarly kept for men who have requested to day, do you have those?

The Witness: Yes, again we will have an arithmetic problem, they are on the same sheet.

Mrs. Cappello: Off the record.

(Discussion off the record. And a five minute recess was taken.)

Mrs. Cappello: On the record.

The Witness: In 1966, nine men requested work, nights, and no men requested any shift. All nine were out-dated. 1967, twenty-three requested night work.

Mr. LaRuffa: You mean requested day work?

The Witness: No, they requested night transfers: that is what you requested.

Mr. LaRuffa: From night to day.

[12] The Witness: No, we have no records to show that, as far as I know, do we?

Mrs. Cappello: I didn't think we asked him for that.

Mr. LaRuffa: Well, that is the question I asked. These are night employed—night men who requested transfers from inspection to other departments.

• • •

PLAINTIFF'S EXHIBIT 97.

UNITED STATES DISTRICT COURT

WESTERN DISTRIT OF NEW YORK

(Case title omitted in printing.)

INDUSTRY WAGE SURVEY

PRESSED OR BLOWN GLASS AND GLASSWARE

May 1964

Bulletin No. 1423

UNITED STATES DEPARTMENT OF LABOR
W. WILLARD WIRTZ, *Secretary*
Bureau of Labor Statistics
Ewan Clague, Commissioner

TABLE 22. PRESSED OR BLOWN GLASS AND GLASSWARE, EXCEPT CONTAINERS: SHIFT DIFFERENTIAL PRACTICES

(Percent of production workers by shift differential provisions,[1] United States and selected regions, May 1964)

Shift differential	United States[2]	Middle Atlantic	Border States	Great Lakes
Second shift				
Workers in establishments having second-shift provisions	93.4	94.1	86.9	97.1
With shift differential	86.0	94.1	66.0	97.1
Uniform cents per hour	81.6	94.1	66.0	85.2
1 cent	1.9	–	–	5.3
3 cents	14.2	19.2	20.0	7.7
4 cents	3.0	–	–	8.3
5 cents	.6	–	2.5	–
6 cents	27.8	51.6	19.0	9.9
8 cents	26.0	11.7	24.5	44.4
9 cents	3.5	–	–	9.6
10 cents	4.1	11.6	–	–
15 cents	.5	–	–	–
Uniform percentage	4.3	–	–	11.9
10 percent	4.3	–	–	11.9
With no shift differential	7.4	–	20.9	–

Plaintiff's Exhibit 97.

Third or other late shift				
Workers in establishments having third- or other late-shift provisions	87.8	94.1	71.3	91.7
With shift differential	82.5	94.1	59.7	91.7
Uniform cents per hour	78.2	94.1	59.7	79.8
1 cent	1.9	–	–	5.3
3 cents	12.4	19.2	16.2	4.9
6 cents	2.1	–	–	5.7
8 cents	27.8	51.6	19.0	9.9
10 cents	4.1	11.6	–	–
12 cents	29.5	11.7	24.5	54.1
15 cents	.5	–	–	–
Uniform percentage	4.3	–	–	11.9
10 percent	4.3	–	–	11.9
With no shift differential	5.2	–	11.5	–

[1] Refers to policies of establishments either currently operating late shifts or having provisions covering late shifts.

[2] Includes data for regions in addition to those shown separately.

NOTE: Because of rounding, sums of individual items may not equal totals.

TABLE 23. PRESSED OR BLOWN GLASS AND GLASSWARE, EXCEPT CONTAINERS: SHIFT DIFFERENTIAL PRACTICES

(Percent of production workers employed on late shifts by amount of pay differential, United States and selected regions, May 1946)

Shift differential	United States[1]	Middle Atlantic	Border States	Great Lakes
Second shift				
Workers employed on second shift	17.5	15.4	11.1	23.3
Receiving shift differential	16.3	15.4	9.0	23.3
Uniform cents per hour	15.2	15.4	9.0	20.4
1 cent	.6	–	–	1.7
3 cents	.7	1.5	–	.4
4 cents	.7	–	–	1.9
6 cents	4.1	7.4	3.3	1.3
8 cents	7.1	3.7	5.7	12.3
9 cents	1.0	–	–	2.8
10 cents	1.0	2.8	–	–
15 cents	.1	–	–	–
Uniform percentage	1.1	–	–	2.9
10 percent	1.1	–	–	2.9
Receiving no shift differential	1.2	–	2.1	–

Plaintiff's Exhibit 97.

Third or other late shift				
Workers employed on third or other late shift	14.0	11.1	9.4	19.7
Receiving shift differential	13.0	11.1	7.2	19.7
Uniform cents per hour	11.9	11.1	7.2	16.7
1 cent	.5	–	–	1.4
3 cents	.5	1.1	–	.1
6 cents	.2	–	–	.5
8 cents	2.1	3.7	1.6	.7
10 cents	.8	2.2	–	–
12 cents	7.7	3.7	5.6	14.1
15 cents	.1	–	–	–
Uniform percentage	1.1	–	–	2.9
10 percent	1.1	–	–	2.9
Receiving no shift differential	1.0	–	2.2	–

[1] Includes data for regions in addition to those shown separately.

NOTE: Because of rounding, sums of individual items may not equal totals.

* * *

APPENDIX A. SCOPE AND METHOD OR SURVEY

Scope of Survey

The survey included establishments primarily engaged in manufacturing glass containers for commercial packing and bottling, and for home canning, and those primarily engaged in manufacturing other glass and glassware, pressed, blown, or shaped from glass produced in the same establishment (industries 3221 and 3229, except textile glass fibers, as defined in the 1957 edition of the *Standard Industrial Classification Manual*, prepared by the U. S. Bureau of the Budget).

The establishments studied were selected from those employing 20 workers or more at the time of reference of the data used in compiling the universe lists.

The number of establishments and workers actually studied by the Bureau, as well as the number estimated to be in the industry during the payroll period studied, are shown in the table below.

Plaintiff's Exhibit 97.

Estimated Number of Establishments and Workers Within the Scope of Survey and Number Studied, Pressed or Blown Glass and Glassware Industries,[1] May 1964

Industry and region[2]	Number of establishments[3]		Workers in establishments			
	Within scope of study	Studied	Within scope of			Studied
			Total[4]	Production workers	Office workers	Total
All establishments:						
United States[5]	216	122	97,089	81,748	5,774	78,187
Middle Atlantic	58	29	33,935	27,375	2,755	27,376
Border States	45	23	14,135	12,268	787	10,676
Southeast	11	8	4,611	4,050	128	3,845
Southwest	17	12	4,814	4,140	238	3,753
Great Lakes	59	35	30,325	26,390	1,409	26,286
Pacific	23	12	8,439	7,318	407	5,421
Glass containers establishments:						
United States[5]	104	70	59,389	51,848	2,606	48,394
Middle Atlantic	30	18	19,205	16,689	927	15,482
Border States	9	7	5,916	5,110	315	5,456
Southeast	11	8	4,611	4,050	128	3,845
Southwest	12	9	3,798	3,280	148	3,191
Great Lakes	23	16	17,407	15,382	678	14,830
Pacific	18	11	8,244	7,158	402	5,382
Other pressed or blown glass and glassware establishments:						
United States[5]	112	52	37,700	29,900	3,168	29,793
Middle Atlantic	28	11	14,730	10,686	1,828	11,894
Border States	36	16	8,219	7,158	472	5,220
Great Lakes	36	19	12,918	11,008	731	11,456

[1] Establishments primarily engaged in the manufacture of textile glass fibers were excluded.

[2] The regions used in this study include: *Middle Atlantic*—New Jersey, New York, and Pennsylvania; *Border States*—Delaware, District of Columbia, Kentucky, Maryland, Virginia, and West Virginia; *Southeast*—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee; *Southwest*—Arkansas, Louisiana, Oklahoma, and Texas; *Great Lakes*—Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; and *Pacific*—California, Nevada, Oregon, and Washington.

[3] Includes only establishments with 20 workers or more at the time of reference of the universe data.

[4] Includes executive, professional, and other workers excluded from the separate production and office worker categories.

[5] Includes data for regions in addition to those shown separately. Alaska and Hawaii were not included in the study.

* * *

AMENDED ANSWER.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

Defendant, Corning Glass Works, files the following Amended Answer to the Complaint in the above-captioned case:

1. The averments of Paragraphs I, II and III of the Complaint are admitted.

2. The averments of Paragraphs IV, V and VI of the Complaint are denied.

AFFIRMATIVE DEFENSES

3. The payments made to steady night shift inspectors were and are based upon a factor other than sex.

4. To the extent that the Complaint states a claim prior to November 1, 1964, it is barred by the statute of limitations.

WHEREFORE, Defendant prays that the Complaint be dismissed.

Respectfully submitted,

JOHN G. WAYMAN,
SCOTT F. ZIMMERMAN,
REED, SMITH, SHAW & McCLAY,
747 Union Trust Building,
Pittsburgh, Pennsylvania 15219,
Counsel for Corning Glass Works.

[Filed, July 10, 1970]

JULY 10, 1970, OPINION OF THE DISTRICT COURT.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

GEORGE P. SHULTZ, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

CORNING GLASS WORKS, a Corporation,

Defendant.

Civil Action No. 1967-29.

Appearances

Francis V. LaRuffa, Chief Trial Attorney, and Mrs. Isabelle R. Cappello, Deputy Counsel for Regional Litigation, United States Department of Labor, Attorneys for the Plaintiff.

Reed, Smith, Shaw & McClay (John G. Wayman and Scott F. Zimmerman, of Counsel), Pittsburgh, Pennsylvania, for the Defendant.

The Secretary of Labor commenced this action under the provisions of Section 17 of the Fair Labor Standards Act (29 U. S. C. § 217) to enjoin violations of Section 6(d) [29 U. S. C. § 206(d)] of the Act, and to restrain any withholding of payment of wages found by the court to be due to employees under the Act.

The plaintiff, George P. Shultz, Secretary of Labor, sues on behalf of all Class C, Class B, TV, and General TV inspectors working during periods pertinent in this lawsuit. Class B inspectors and Class C inspectors perform their functions in A Factory and in B & C Factory [also referred to herein as B Factory]. TV inspectors and General TV inspectors function in the Pressware plant.

This dispute arose because of the higher base wage rates paid to inspectors working on the steady night shift who allegedly performed work equal to that performed by inspectors on the day and afternoon shifts. Prior to June 1, 1966, except during World War II, only female inspectors worked in the disputed jobs on the day and afternoon shifts, and only male inspectors worked on the steady night shift.

The defendant's employees represented by the plaintiff include both male and female inspectors in the various job categories. Those male inspectors who did inspection work on the day and afternoon shifts after June 11, 1964, the effective date of the Equal Pay Act, are damaged monetarily if the violation charged is proven because, absent a violation, the base rate for the day and afternoon shifts would equal the higher base rate paid at night.

Section 6(d), commonly known as the Equal Pay Act, was enacted on June 10, 1963, to be effective one year thereafter. Section 6(d) (1) provides:

> "No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a

rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided,* That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee."

To carry its burden of proof, the plaintiff must establish by a fair preponderance of the evidence these elements:

(1) The disputed jobs entail equal work, that is, the performance of these jobs, under smiliar working conditions, require equal skill, effort, and responsibility;

(2) Within the same establishment, the defendant pays employees doing equal work a different wage rate;

(3) The different wage rates are paid on account of sex.

The four exceptions to the Act have been held to be affirmative defenses which must be pleaded and proven by a defendant-employer. *Wirtz v. Basic, Inc.,* 256 F. Supp. 786 (D. Nev. 1966). Finally, an employer may not decrease any employee's pay rate to come in comformity with the Act.

In its original answer, the defendant denied that the work performed by the men and women involved in this lawsuit was equal. After the trial, the defendant moved, pursuant to Rule-15 of the Federal Rules of Civil Procedure, for an order permitting it to amend its answer to conform to the evidence. The proposed amendments are: (1) "The payments made to steady night shift inspectors were and are based upon a factor other than sex;" (2) "To the extent that the complaint states a claim prior to November 1, 1964, it is barred by the statute of limitations." Defendant's motion to amend its answer is granted.

At the beginning of the trial, the parties stipulated that the statute of limitations barred all claims arising prior to November 1, 1964. Accordingly, any award for back pay should be computed commencing on November 1, 1964.

The court has considered the extensive memoranda of law submitted by the parties. What follows constitutes this court's findings of fact and conclusions of law.

ESTABLISHMENT

All three plants are separate, making different products. A Factory is engaged primarily in the production of pyrex products, B & C Factory in the production of optical products, and the Pressware plant in the production of television products.

A Factory and B & C Factory share an office building, are located back to back, and are connected by passageways. The Pressware plant is about one-half mile away from the other two.

Each plant is an independent manufacturing unit, having its own management and engineering staff and a separate payroll department.

A central employment office where all prospective employees make their original applications services all Corning area plants. As a particular plant needs new workers, a final pre-employment interview is conducted at the separate personnel office of the plant, where the decision is made to accept or reject the applicant for employment. After employment, an employee, by exercising his seniority rights, may transfer from one plant to another. However, a transfer from A Factory or B Factory to Pressware, or back to A Factory or B Factory from Pressware, is unusual since Class C and Class B inspectors work only in A Factory or B Factory, and TV and General TV inspectors work only in the Pressware plant.

Most employees at Corning, including the inspectors, are represented by the American Flint Glass Workers of North America, Local 1000. One collective bargaining agreement covers all Corning area plants. All payroll checks are written on a computer on information supplied by each plant.

The court finds that A Factory and B & C Factory constitute one establishment, and that the Pressware plant constitutes a separate establishment within the meaning of the Equal Pay Act. The reasons for this holding are that Pressware is separated from the other two plants, and because the inspectors do not transfer back and forth between the Pressware plant and the other two plants. *Phillips v. Walling,* 324 U. S. 490 (1944); *Mitchell v. Bekins Van & Storage Company,* 325 U. S. 1027 (1957), 29 CFR 800.108.

HISTORY.

Steady night shift inspection jobs were added to existing rotating day and afternoon shift inspection jobs some time between 1925 and 1930, when the introduction of automatic production equipment made it necessary to inspect wares on three shifts. At that time, New York State law prohibited the employment of women between the hours of 10:00 P. M. and 6:00 A.M.[1] The defendant did not pay additional wages in 1930 as a shift differential. However, in order to obtain male employees willing to perform what was regarded by the male employees as female work, the defendant had to pay the male employees a higher rate than it paid female employees who performed inspection work on the day and afternoon shifts. This higher base rate for steady night work was never paid for inspection work on the day and afternoon shifts until January 20, 1969, when the company and the union agreed to equalize base rates on all three shifts with payment retroactive to November, 1968.

Beginning in the early 30's, some inspectors at some stations on the steady night shift performed their own "utility work" which entailed, among other things, carrying heavy loads from the end of the lehr. Similar work on the day and afternoon shifts was performed by utility workers assigned to assist the female inspectors.

Because of the manpower shortages during World War II, the defendant employed some women as steady night shift inspectors. These female night inspectors performed their own utility work, including the moving of boxes, the

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[1] Law of March 30, 1927, ch. 453, § 172 [1927] N. Y. Laws; Law of April 28, 1930, ch. 868, § 172 [1930] N. Y. Laws (which carried forward, without change, the prohibition against night work by females).

trucking away of ware and the positioning of skids and boxes adjacent to the inspection area. They received a higher rate of pay than the day and afternoon inspectors and the same rate paid to male night inspectors, if and when they performed all the work ordinarily required of a male night inspector.

After World War II, Corning returned to the prior practice of employing only males in the steady third shift inspection jobs.

In 1944, the American Flint Glass Workers Union of North America negotiated a collective bargaining agreement covering many production and maintenance employees of the defendant's plants located in Corning, New York. This contract covered the inspectors employed at A Factory, B & C Factory, and the Pressware plants, and it provided for a steady night shift wage differential as a premium for night work. This differential was applicable to inspectors as well as most other hourly employees of the defendant.

In addition to the steady night shift wage differential, this contract continued in effect the existing differential in base wage rate between the steady night shift inspectors and the rotating day and afternoon shift inspectors. Between the years 1944 and 1968, all collective bargaining agreements entered into by the defendant with the union have maintained similar wage differential structures with minor variations caused by negotiation of percentage rather than flat rate increases.

In 1953, New York State law was amended to provide, for the first time, that females over twenty-one years of

age could work after midnight in factories operating multiple shifts, where the Industrial Commissioner found that satisfactory conditions exist and granted his approval.[2] Similar provisions of the law have remained in effect during all times pertinent in this lawsuit.[3]

There is no evidence offered by either side that the Industrial Commissioner ever granted permission to the defendant to employ females on the steady night shift prior to June 1, 1966. From the fact that women actually worked the night shift inspection jobs after June 1, 1966, the court infers that the defendant obtained the necessary permission from the Industrial Commissioner. Further, the defendant has failed to offer any explanation of what, if any, efforts were made to obtain this permission at an earlier date.

MERGER OF RATE SCHEDULES

Prior to June 11, 1964, the defendant maintained separate "male" and "female" rate schedules. Under these separate rate schedules, male inspectors working the steady night shift were paid a higher hourly base rate than the rotating day and afternoon female inspectors who were in the same job category, performing work rated substantially equal by defendant's own job evaluation plans.

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[2] Law of April 13, 1953, ch. 708, § 172 [1953] N. Y. Laws (which amended section 172 to allow, for the first time, night work for females upon approval by the Industrial Commissioner).

[3] During the period pertinent in this lawsuit, New York Labor Law, Section 173(3)(a)(1), effective October 1, 1963, carried forward the effect of the 1953 amendment allowing night work by females after the required approval. N. Y. Labor Law § 173(3)(a)(1) (McKinney 1965).

Effective June 11, 1964, the defendant merged these separate schedules into one revised rate schedule. This merger, however, preserved the differential in base rate between the men and the women inspectors on all three shifts. This difference was preserved by placing the women into a lower labor grade on the revised rate schedule with a lower rate of pay.

A comparison of the separate schedules and the single revised schedule illustrates how the difference was maintained.

The female rate schedule dated November 19, 1962 indicates that a Class C female inspector was in group 3 (*i.e.*, the wage group of female employees whose jobs were evaluated between 215 and 235) and was paid $1.89 to $1.97½. On the merged rate schedule, Class C female inspectors were classified as "new group" 1, and their rate of pay was $1.97½.

The *male* rate schedule dated November 19, 1962 indicates that a Class C male inspector, working nights, was classified in wage group 2 (*i.e.*, that group of male employees whose jobs were evaluated between 165 and 235) and was paid $1.99 to $2.13½. On the merged rate schedule, the former male rates were maintained by placing the Class C male inspector in "new group" 5, with rate range of $2.01½ to $2.13½.

The Class B inspectors and the General TV inspectors, male and female, were affected similarly by the merger of rate schedules.

Therefore, the merger continued the historical difference in base hourly rates of the men and women inspectors

working the three shifts. In the case of Class C and TV inspectors, the base rate differential between men and women inspectors was 16¢ an hour. For Class B and General TV inspectors, the hourly differential was 18¢. In the years after June 11, 1964, the hourly base rate differential was gradually increased.

SENIORITY LISTS

Before June 1, 1966, defendant had maintained separate "male" and "female" seniority lists. In effect, these separate lists made it impossible for a female inspector to transfer into a steady night-time traditionally male inspection job.

Effective July, 1965, the Civil Rights Act mandated equal employment opportunities without regard to an employee's sex.[4] On May 31, 1966, the defendant abandoned its separate seniority lists, thus affording female inspectors an opportunity to take higher paid night shift inspection jobs as they become available. After June 1, 1966, a number of female employees availed themselves of the opportunity to use seniority to take the higher paying night shift inspection jobs. Of course, they also received the Corning-wide night-time differential provided by the collective bargaining agreement. Also since June, 1966, some men inspectors have taken day and afternoon inspection jobs with the reduced base hourly wage rate. This abandonment of the separate seniority lists was accomplished by mutual agreement between the union and defendant.

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[4] Civil Rights Act, 42 U. S. C. A. § 2000 e-2 (1970) (statute effective one year after July 2, 1964).

EQUALITY OF WORK— JOB EVALUATION PLANS: ADMISSIBILITY AND ANALYSIS

In attempting to meet its burden of proving the equality of the disputed inspection jobs on all three shifts, the plaintiff has relied heavily on two job evaluation studies conducted by the defendant. These evaluation studies rate the disputed work equal on all three shifts.

In a pretrial statement analyzing the plaintiff's proposed exhibits and giving reasons for objections, which the court required the defendant to submit, no objection was made to Exhibits 34 to 41, and Exhibits 42 to 46 were objected to only on the grounds of relevancy and materiality. During the trial, the defendant objected only on the grounds of relevancy and materiality to the admission of plaintiff's Exhibits 34 to 46. In its post-trial memorandum, defendant for the first time raises additional objections to these exhibits, claiming that the records are hearsay, that they are not business records kept in the regular course of business, and that a proper foundation was not laid for their admissibility.

Since these grounds were not asserted definitely during the trial, the defendant has waived its right to object on these grounds. 2B Barron & Holtzhoff, Federal Practice and Procedure, § 1021, at pp. 309-319 (C. A. Wright rev. 1961). If the defendant's objection had been made clear at the time of trial, the plaintiff would have had an opportunity to clear up any deficiency which was present in the offer.

Furthermore, the purpose of Title 28, United States Code, Section 1732, the Federal Business Records Act,

"is to permit the introduction into evidence of reports in substitution for the actual testimony in court of the persons making the reports." *United States v. New York Foreign Trade Zone Operators*, 304 F. 2d 792 (2d Cir. 1962). "The statute was designed to bring the realities of business and professional practice into court in usable form . . ." *Korte v. New York, N. H. & H. R. R.*, 191 F. 2d 86, 91 (2d Cir. 1951).

The records admitted were made and kept in the regular course of business of the defendant by trained observers following guidelines published by the defendant after a careful study had been made of the problems involved in evaluating the jobs. The job descriptions and evaluations were regularly used by the defendant in the course of its business and they were all prepared before the present litigation began.

Considering the purpose of the Federal Business Records Act, the reliability of these records was well established. Thus, defendant's objections to the admission of these exhibits is overruled.

It is necessary for the court to examine these studies to determine if the plaintiff has met its burden of proving equality of work.

The Stevenson, Jordan & Harrison Job Evaluation Plan [hereinafter referred to as the SJ&H Plan] was installed in 1946 and, according to the defendant, remained in effect until January 20, 1969. This evaluation plan measured skill, responsibility, and working conditions in evaluating the work performed in different job classifications. The defendant claims it was deficient since it did not take into account the amount of effort required in the

performance of the jobs, or the time of the day the work was performed.

Further, defendant claims that the SJ&H Plan was never used to set wage rates because all base wage rates, including the separate male and female wage curves and the merged base rates, were the result of negotiation between the company and the union. In sum, the defendant contends, a higher base rate was negotiated for the male inspectors on the steady night shift, in spite of the fact that the SJ&H Plan evaluated the work done under the same inspection classification equal on all three shifts.

The court is in accord with defendant's position that plaintiff cannot satisfy its burden of proof by relying on the descriptions used and the evaluation points determined in the SJ&H Plan. The Equal Pay Act requires that, for jobs to be equal, their performance must require "equal skill, effort, and responsibility," and must be performed "under similar working conditions, . . ." The SJ&H Plan did not measure effort. Therefore, the descriptions and evaluations prepared under this plan are insufficient alone to satisfy plaintiff's burden of proving the equality of the work.

The plaintiff also relies upon the Corning Glass Works Job Evaluation Plan [hereinafter referred to as CGW Plan], and the descriptions of the jobs made under this plan to satisfy its burden of proof.

The CGW Plan was developed over the years commencing in 1957. The CGW Evaluation Manual states that the purpose of the plan was "to establish equitable differences in pay between jobs based on job requirements," and further explains that "through the use of this system, equitable

relationships will be established in terms of job evalu points. When these points are applied to local curves, they will establish the rate range for any job at that location." The CGW Plan measured e skill, responsibility, and working conditions. Like SJ&H Plan, the CGW Plan does not take into accou time of day a particular job is performed.

The CGW Plan was first installed to establish wag a branch plant in 1960 and, since that time, it has installed at 24 branch plants. There was discussio tween the company and the union in 1962 concernin use at Corning. According to the defendant, this of use the plan in Corning was rejected by the uni 1962 and on five subsequent occasions. The reason the rejection by the union are unknown to the court. N theless, in January, 1969, Corning and the union a that the CGW Plan would be the official job evalu plan at Corning, with rates effective November, 196

Although the plan was not in effect until the latter p 1968, the Industrial Engineering Department at Co prepared descriptions of several of the jobs in qu in this lawsuit and evaluated each of them in accor with the CGW Plan during 1963 and early 1964. this plan, the work in [most of] the job classific disputed in this lawsuit was evaluated as equal three shifts.

Defendant argues that plaintiff's use of the CGW evaluation points and job descriptions also fails to s plaintiff's burden of proof. It is defendant's clain the job descriptions under this plan describe wh inspector is supposed to do, but do not actually de

the work he actually performs. Further, defendant argues that the CGW description and evaluation points are irrelevant prior to January, 1969 when the plan went into effect.

The testimony during the trial and the procedures set forth in the CGW "Guide for Describing And Evaluating" indicate that the first step in the evaluation procedure is an on-the-job observation of the work actually being performed in a certain job classification. Job analysts, together with the employees actually performing the work and their superiors, collaborate in describing the work actually performed. Once this job description is finally drafted, it serves as the basis for job evaluation.

Under this plan, plant supervisors are responsible to report to the job analysts any significant changes in the work actually performed which might affect the originally drafted job description. Obviously, this requirement insures that job descriptions and the resulting job evaluations will be kept as current as possible and reflect the work that is actually being done within a job classification.

The court notes that no CGW job description of TV inspectors in Pressware was admitted in evidence. Further, the product line in Pressware changed in late 1968 resulting in a change in the CGW job descriptions that had been prepared for this plant (*i.e.*, General TV Inspector). Mr. Edward Noble, Manager of Job Evaluation at Corning, testified that the CGW description had been revised, but that this particular job still required equal work on all three shifts.

The defendant also argues that plaintiff may not rely on the CGW job descriptions to show that the jobs in question

are equal under the Act, since the descriptions do not reflect the fact that some male inspectors on the night shift do their own utility work, while some female inspectors on the rotating day and afternoon shifts are assisted by utility workers. Utility workers move inspected material off the lehr, clean up around the inspection stations, pack ware and move it from the inspection area. They are required to exert more manual effort than the inspectors, but their jobs are evaluated at points lower than the inspectors in visual effort, skill, and responsibility.

Specifically, during the years 1964 to 1968, utility workers were assigned to help female day and afternoon inspectors in B Factory when Flameware was being manufactured. Flameware is a pyrex product which is manufactured from 12 to 20 weeks a year. During the years from November, 1964 to June, 1968, 120 female day and afternoon Class C and Class B inspectors worked in B Factory on Flameware. During these same years, as many as 10 and as few as 4 men had been assigned to perform this utility work during a particular year.

The analyst was instructed under the CGW Evaluation Manual to "cover the work normally performed on a regular basis and those duties which require special skills but are performed only occasionally." The analyst was further instructed that "it is not necessary for the description to include every task performed in the past or likely to be performed in the future."

The performance of utility tasks by some inspectors does not make the jobs unequal. In describing and evaluating the inspection jobs, defendant's analysts considered the utility work of so little consequence that these tasks were

not included in the job descriptions of any of the inspectors. For each job classified, the job descriptions are the same on all shifts regardless of whether the work is performed by men or women. Since June 1, 1966, women have been permitted to work on the steady night shift at the same wage rate as the male night inspectors. The conclusion that utility work by inspectors was incidental or "performed only occasionally" is borne out by the fact that defendant has always paid male steady night inspectors at the same rate, whether they performed utility work or not.

Because of these facts, the court concludes that the defendant over-emphasized the role of utility workers in assisting the women during the day and afternoon shifts, and put too much emphasis on the extra work done by the male inspectors during the night shift.

Furthermore, there is other evidence in the case to show the equality of the work. Although he qualified his testimony, Edward W. Noble, manager of job evaluation for the defendant, testified: "There is very little difference from shift to shift," in describing the jobs in question. He did not know what each and every individual did, but he was familiar with the jobs from occasional personal observation and from reports made by job analysts and plant managers who were instructed to report any significant job changes.

The court is satisfied that the most accurate description of what the inspectors actually did is provided by the thoughtful description of the job analyst made under the supervision of the job evaluation manager, in cooperation with the employee himself and his plant manager. Another

reason for their reliability is that these studies were made before there was any hint of litigation.

To hear testimony from a fair sampling of the employees occupying all the disputed jobs on all shifts during the relevant time period would have consumed, in the court's best estimate, many trial days. And there is no reason to believe that the descriptions which the court could have interpolated from all this testimony would reflect the work actually done in any better fashion than the job descriptions drafted under the CGW Plan.

The defendant also argues that the CGW job evaluation is unreliable under Equal Pay Act standards because the time of day the work is performed is not considered in determining the relative similarity in working conditions. However, the defendant pays a Corning-wide differential for night work. In *Wirtz v. Dennison Manufacturing Co.*, 265 F. Supp. 787, fn.1 (D. Mass. 1967), the court said that "this element (working less desirable night shift) appears to have been taken care of by the fact that the men received an additional allowance over and above the basic rate under the company's regularly established differential for night work." This court is in accord that a differential such as the Corning-wide night differential adequately compensates employees for working undesirable times of day and, therefore, rejects the defendant's contention in this respect.

Finally, in a case brought under the overtime provisions of the Fair Labor Standards Act, the Supreme Court pointed out that "the employer . . . is in [a] position to know and to produce the most probative facts concerning the nature and amount of work performed." *Anderson v. Mt. Clemons Pottery Co.*, 328 U. S. 680, 687 (1946). Here

as in *Anderson,* the defendant is in the best position to offer evidence and to explain why the results of its own job evaluation study should not be considered in determining the equality of work on all three shifts. The court concludes that the defendant has failed to offer any persuasive reason why the CGW descriptions and evaluation points should not be relied upon by the court.

Therefore, on all the testimony and exhibits before the court, the court concludes that the CGW job descriptions used for the jobs disputed in this lawsuit reflect the work that is actually being done within the meaning of the Equal Pay Act and the regulations promulgated thereunder. As a result of this, the court further concludes that the evaluation points assigned to the jobs disputed in this case are a valid reflection of the equality of the work performed.

Therefore, the court concludes that the work performed by the inspectors involved in this lawsuit and evaluated under the CGW Plan is equal on all three shifts and has been so since November, 1964, within the meaning of the provisions of the Equal Pay Act.

AFFIRMATIVE DEFENSE

The defendant, as one of its affirmative defenses, claims that the higher base rate paid steady night shift inspectors is "a differential based on any other factor other than sex." The defendant traces the history of the higher base rate on the steady night shift from its creation in 1930, [to its final elimination in January, 1969]. The circumstances causing the creation and perpetuation of the higher rate [until 1969], the defendant argues, explains that the higher rate was a result of a "factor other than sex."

The creation of the night shift inspection jobs was brought about by the advent of automation in the glass manufacturing business. Inspection work had to be done on all three shifts.

In 1930, women had filled most, if not all, of the inspection jobs on the day and afternoon shifts. New York law did not permit women to occupy night shift jobs. As the defendant explains it, men were less than enthuastic in accepting steady night shift inspection work which they regarded as "women's work."

In addition, the men who were to fill the newly created night inspection positions had been working in the blowing room where they received incentive pay. With their average incentive pay added to their regular wage, they could earn more than the company was paying for inspection work on the day and afternoon shifts.

Because of these factors, it was necessary to pay men a higher rate than women for the night inspection work.

This "differential" in base rate was continued as a result of negotiation until January, 1969, even though the first union contract in 1944 provided for a Corning-wide night shift differential. Prior to June 1, 1966, only male inspectors worked the night shift and received this differential in base rate, plus a night shift differential.

The night shift differential was originally 5¢ an hour and reached 12¢ an hour in 1958. The steady night shift differential represents compensation for the undesirable hours of this shift, which begins at 10:00 P. M., 11:00 P. M., or midnight.

For purposes of this litigation, the defendant has called the differential in hourly base pay a "supplemental escalating shift differential." This term is not used in the agreements and defendant's supervisors who testified had never heard of it and did not understand what it meant.

Citing the interaction between the company and the union, the fact that New York law prohibited night work by women for a long period of time, and the original reasons why a differential in base rate was necessary, the defendant attempts to justify the higher night shift base rate paid to men after June 11, 1964. The court, however, is not persuaded that paying a higher steady night shift rate, a "supplemental escalating shift differential," is justifiable after the effective date of the Equal Pay Act.

The Act was passed in June, 1963 to be effective with respect to defendant's employees in June, 1964. Thus, the defendant had a full year to implement compliance. As of 1953, New York State had lifted its absolute ban on night work by women. As of that year, women could have occupied night work positions if approval by the Industrial Commissioner was sought and obtained. And, although the original basis for the higher base rate on the steady night shift may have been reasonable in 1930, this higher rate could not, in the court's view, be legally maintained under circumstances in this case after the effective date of the Equal Pay Act.

Therefore, the defendant has failed to carry its burden of establishing, by a fair preponderance of the evidence, that the higher steady night shift differential was based on "any other factor other than sex."

SUMMARY

The court concludes that the work performed by the Class C and Class B inspectors in A Factory and B Factory and the work performed by the General TV inspectors in Pressware was equal on all three shifts from November 1, 1964 until January, 1969, and that the higher base rate paid the steady night shift inspectors was maintained after June 11, 1964 on account of sex, in violation of the Equal Pay Act. The court further concludes that the effect of this violation persisted after June 1, 1966. Finally, the court concludes that the higher base rate paid night inspectors was not based on any other factor other than sex

At the trial, the court deferred consideration of the amount of wages allegedly due the day and afternoon inspectors involved in this case. In light of the above findings of fact and conclusions of law, the defendant is restrained from withholding the payment of wages due for the period from November 1, 1964 [to November, 1968, when the inspection base rates were equalized for all three shifts by the January 20, 1969 agreement].

The "supplemental escalating shift differential" in base rate shall be the basis for computing the wages due the Class C and Class B inspectors in A and B Factories and the TV and General TV inspectors in Pressware. There shall be no award for TV inspectors in Pressware.

The parties shall attempt to agree upon the correct amount due for each employee affected by this decision. If the parties cannot agree on the amount of the judgment within a period of sixty days, or such further time granted by order of the court, then the plaintiff shall move on

notice for an accounting by a Master to be appointed by the court.

The plaintiff may at any time renew his application for the issuance of further injunctive relief which may be equitable under the circumstances of this case. Presently, the court has refrained from issuing such further injunction because the inspection rates on all shifts have been equalized by the January 20, 1969 agreement

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: July 10, 1970.

TRANSCRIPT OF PROCEEDINGS, MAY 10, 1971.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

[156] Proceedings held before the Hon. John T. Curtin, United States District Judge, at the United States Court House, Buffalo, New York, resuming on May 10, 1971.

Appearances:

Peter G. Nash, Solicitor of Labor, Attorney for the Plaintiff; Francis V. LaRuffa, Regional Solicitor; Isabelle R. Cappello, Senior Attorney; Laurel J. McKee, Attorney, of Counsel.

Messrs. Reed, Smith, Shaw & McClay, Attorneys for the Defendant; John G. Wayman, Esq., and Scott F. Zimmerman, Esq., of Counsel.

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[189] SETH J. McKIBBIN (137 Davis Street, Painted Post, New York) a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mrs. Cappello:

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[221] The Court: Mr. McKibbin, the difference there between three o seven and two ninety four or five, you have generally in the plant,—you have your,—what do you call it when someone works nights, the extra money they get, the night shift—

The Witness: Shift differential.

The Court: Night shift differential. Is this a night shift differential?

The Witness: This differential, your Honor, that [222] you refer to, the difference between two ninety four and a half and three o seven as of 11-16-70 is a distinction that we made as part of the January 4, 1969 contract settlement, and in that settlement we agreed that certain employees with certain seniority when they worked the night shift on inspection and other classifications, there would be a specified rate protection program applicable to them and employees with less than the required seniority would not have that protection.

The Court: I see, so that in the contract you also talk about night shift differential?

The Witness: Right.

The Court: And this is different from the night shift differential?

The Witness: It is, your Honor.

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[248] RE-DIRECT EXAMINATION by Mrs. Cappello:

• • •

[257] Q. Now, Mr. McKibbin, what are you today calling the higher rate that is being paid to the night shift inspectors? A. I am not calling it anything.

Q. Well, you have referred to a protective rate. A. The rate is protected.

Q. Now, what is the difference between the supplemental escalating shift differential, the additional [258] red circle differential and the protected rate that the night shift inspectors receive.

Mr. Zimmerman: Your Honor, I object to that question because it calls for a legal conclusion on the part of the witness. The facts speak for themselves and he has testified to what the facts are.

The Court: Overruled.

The Witness: I am not sure that there is too much in common between the two. As I indicated before, the escalating shift differential phrase was something that we propounded in response to your Interrogatory to describe what happened, and I feel that that term is an accurate reflection of what existed at the time that our answer was propounded.

• • •

[259] The Witness: The second phrase that you used, that you cite there, covers a different period of time, a different monetary differential, if you will, and was a result of a new agreement with the union and as far as I am concerned, has little bearing on the former phrase which you apparently didn't like anyway. The third thing is a protected rate. It isn't a differential at all, if I understand what your state-

ment was. You are comparing two differentials at different points in time with a rate at still a different point in time.

By Mrs. Cappello:

Q. Are you finished? A. I am finished. Thank you.

Q. Do all these terms refer to the higher rate which the steady night shift inspectors received? [260] A. At different points in time.

Q. And what is the reason for this higher rate on the night shift? How did that get started? A. At what point in time?

Mr. Zimmerman: Which one are we referring to, your Honor?

The Court: We have two people. If there is an objection, I overrule the objection. At what point in time, Mrs. Cappello?

By Mrs. Cappello:

Q. Throughout this litigation the night shift inspectors have received a higher rate, throughout the entire course of the litigation. Why have they received a higher rate? A. I think the only answer I can give, that is the way we have negotiated.

Q. Does it go back to the period in 1925 or 1930 when the men had to be put on the night shift to do inspection work and they wouldn't work at the female rate? A. There was a historical relationship that goes back that far.

• • •

[275] Q. Would you read the question, please?

(Whereupon, the pending question was read as follows:

"Q. Mr. McKibbin, I am now going to show you a document that has been marked as Plaintiff's Exhibit 104, and it was furnished to us pursuant to a subpoena for the records showing the names and service dates of [276] employees currently on lay-off and subject to recall as Class C, Class B or General TV Inspector in A Factory, B Factory or Pressware. I counted five hundred fifty four names, Mr. McKibbin, in that exhibit. Would you compare that exhibit to Exhibit 103 and tell me whether five hundred fifty four people, or however many are shown in this Exhibit 102, would have to be offered the job of Class B, Class C or General TV Inspector before any of the employees named in Exhibit 103 would be offered that job, and I assume you could do that by the service dates?")

The Witness: I am sure it can be done by service dates, but since this list is not in service dates sequence and I haven't physically counted them, I can't, unless you want me to take the time to do it.

• • •

[289] Q. Mr. McKibbin, we were talking about Plaintiff's Exhibit 104 that has been marked for identification and it shows the records, or it was furnished to as pursuant to a subpoena for records showing the names and service dates of employees currently on lay-off and subject to recall. That is Class C, Class B or General TV Inspector in A Factory, B Factory or Pressware. Can we, by looking at the service dates in this exhibit, tell the employees who have been hired since January 20, 1969, and subtract that number from the rest of the employees and then be able to figure out how many employees would have

to be offered these jobs before any new hires cou
offered the job, and that is new hires since Janua
1969? A. Yes.

[290] Mrs. Cappello: Your Honor, we have d
count on this and Mr. McKibbin won't verif
figures because he didn't count it, but we count
hundred fifty employees; twelve who have
newly hired since January 20, 1969, which
that five hundred forty three would have
offered these jobs before any new hires coul
them.

The Witness: Your Honor, in our conver
I asked that we also observe that that does not
that it is improbable that it couldn't happen b
many of the people in the five hundred numb
she is talking about may have left the area or
employment elsewhere or not be interested f
reason or another.

The Court: Certainly there would be, Mrs
pello. I am sure you must agree there wo
built into this five hundred figure a large di
for lack of interest, moving, health reasons,
reasons and many other reasons.

[291] The Witness: Yes.

By Mrs. Cappello:

Q. How long are these employees kept on this
list, Mr. McKibbin, after a certain number of year
they refuse the job, don't you drop them? A. I thin
three years, thirty six months, something like tha
their last day worked.

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PLAINTIFF'S EXHIBIT 101.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

[Regarding proceedings of May, 1971]

DEFENDANT'S ANSWERS TO PLAINTIFF'S REVISED REQUESTS FOR ADMISSIONS AND THIRD SET OF INTERROGATORIES.

1. Wage rate schedules in effect since November 1967 and implementation of the wage adjustments of the collective bargaining agreement of January 4, 1969, resulted in Class C and Class B inspectors in A Factory and B Factory being paid at the following maximum rates on the indicated dates and shifts:

	11/67 to 11/4/68	11/04/68 to 11/11/68	11/11/68 to 11/ 3/69	11/ 3/69 to 1/05/70	1/5/70 to Present
Class C, night shift	$2.46	$2.66	$2.68	$2.80	$2.83
Class C, day and afternoon shifts	2.29	2.49	2.64	2.76	2.79
Class B, night shift	2.57½	2.77½	2.79½	2.91½	2.95
Class B, day and afternoon shifts	2.370	2.57	2.68	2.80	2.83

Answer

1. Denied.

The collective bargaining agreement of January 4, 1969, and the Corning Glass Works Job Evaluation Plan eliminated the job classifications of Class C Inspector, Nights and Class B Inspector, Nights and resulted in adjustments to the base wage rates (maximum) of the jobs of Inspector Class C and Inspector Class B in A and B Factory as follows:

	Base Wage Rate from 11/1/67 through 1/5/69	Base Wage Rate Resulting From Agreement of 1/4/69 through 11/2/69	Base Wage Rate from 11/3/69 through 1/4/70	Base Wage Rate from 1/5/70 through 11/1/70	Base Wage Rate from 11/2/70 through 1/3/71	Base Wage Rate from 1/4/71 through present
Inspector Class C Night Shift	2.46	not in existence	not in existence	not in existence	not in existence	not in existence
Inspector Class C Day & Afternoon Shifts	2.29	not in existence	not in existence	not in existence	not in existence	not in existence
Inspector Class C, All Shifts	not in existence	2.64	2.76	2.79	2.90	2.93
Inspector Class B, Night Shift	2.575	not in existence	not in existence	not in existence	not in existence	not in existence
Inspector Class B, Day & Afternoon Shifts	2.37	not in existence	not in existence	not in existence	not in existence	not in existence
Inspector Class B, All Shifts	not in existence	2.68	2.80	2.83	2.945	2.975

* * *

Plaintiff's Exhibit 101.

2. Wage rate schedules in effect since November 1967 and implementation of the collective bargaining agreement of January 4, 1969, resulted in the General TV inspector in Pressware being paid at the following maximum rates on the indicated dates and shifts:

	11/67 to 11/4/68	11/04/68 to 11/11/68	11/11/68 to 11/03/69	11/03/69 to 12/15/69
General TV, night shift	$2.57½	$2.77½	$2.79½	$2.91½
General TV, day and afternoon shifts	2.37	2.57	2.68	2.80

Answer

2. Denied.

The collective bargaining agreement of January 4, 1969, and the Corning Glass Works Job Evaluation Plan eliminated the job classification of General TV Inspector, Nights, and resulted in adjustments to the base wage rate (maximum) of the job of General TV Inspector as follows:

	Base Wage Rate from 11/1/67 through 1/5/69	Base Wage Rate Resulting From Agreement of 1/4/69 through 11/2/69	Base Wage Rate from 11/3/69 through 12/15/69	
General TV Inspector, Night Shift	2.575	not in existence	not in existence	
General TV Inspector, Day & Afternoon Shifts	2.37	not in existence	not in existence	Job Canceled December 15, 1969
General TV Inspector, All Shifts	not in existence	2.68	2.80	

* * *

PLAINTIFF'S EXHIBIT 101-A.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

(Case title omitted in printing.)

[Regarding proceedings of May, 1971]

DEFENDANT CORNING GLASS WORKS' RESPONSE TO PLAINTIFF'S REQUESTS FOR ADMISSIONS AND THIRD SET OF INTERROGATORIES.

EXHIBIT A TO PLAINTIFF'S EXHIBIT 101-A.

Collective bargaining agreement dated January 4, 1969.

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ARTICLE XII

SHIFT DIFFERENTIAL

SECTION 1. Effective the first Monday after the execution of this Agreement workers employed on shifts starting at 2:00 p.m., 3:00 p.m., and 4:00 p.m., will be paid $.10 per hour as a premium for such work.

SECTION 2. Effective the first Monday after the execution of this Agreement workers employed on non-rotating shifts starting at 10:00 p.m., 11:00 p.m., and Midnight will be paid $0.16 per hour as a premium for such work.

Exhibit A Attached to Plaintiff's Exhibit 101-A.

SECTION 3. Effective the first Monday after the execution of this Agreement workers employed on rotating shifts starting at 10:00 p.m., 11:00 p.m., and Midnight will be paid $0.12 per hour as a premium for such work.

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ARTICLE XXVI WAGE RATES

SECTION 8. Effective November 4, 1968, all hourly wage rates will be increased eight per cent (8%), adjusted to the nearest one-half cent or twenty cents ($.20), whichever is greater, and existing piece rates will be adjusted accordingly.

EXHIBIT B TO PLAINTIFF'S EXHIBIT 101-A.

CGW Job Evaluation Installation Rules.

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9) Any employee who as of the date of the installation of the Corning Glass Works Hourly Job Evaluation Plan is an employe of the Corning area plants covered by the terms of the Basic Agreement and who thereafter by operation of rights under the Basic Agreement continues to hold or takes any of the jobs specified on the third shift shall receive the rates which he or she would have received for that work under preexisting practices. Those jobs being:

Silk Screen Operator
Inspector C
Inspector B
General TV Inspector
Cafeteria Worker

Exhibit B Attached to Plaintiff's Exhibit 101-A.

Persons who become employes after the date of installation shall be paid the evaluated rate when they perform work on any of the evaluated jobs.

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EXHIBIT C TO PLAINTIFF'S EXHIBIT 101-A.

Job Evaluation Questions & Answers.

December 27, 1968.

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1) Why was the January 20, 1969, date picked to install Job Evaluation?

Although most jobs have been evaluated under the new system, some have not (less than 10% of the people), the January 20th date was set to allow enough time to get all jobs evaluated before installing the system.

2) How is Job Evaluation retroactivity figured?

Retroactivity is based on the job an employee was working on on November 11, 1968.

3) Does the fact that I was off due to the November 11th Veterans' Holiday affect my retroactivity?

No. Retroactivity in this case would be based on the job for which you were paid as an unworked holiday.

4) How are the general increase of 8% or 20¢ and Job Evaluation increases combined?

The general increase goes into effect first and is retroactive to November 4, 1968. The new job evalua-

tion rates which include the 2¢ go into effect January 20, 1969, and are retroactive to November 11, 1968.

To figure any specific job rate which is increased under job evaluation, first figure the amount of the general increase and add it to the current rate. Then add in the amount of the increase shown on the sheet of rates published during negotiation.

5) What is red circle rate protection?

Red circle rate protection means that under the new plan, there are not enough points to justify paying the current rate for a job. People working on these jobs on the date of the installation of the new plan will continue to be paid the old rate or in other words, get red circle rate protection. This protection applies only to the job an employe is working on on the date of installation.

6) If I am not at the top of my rate and the top rate is red circled, do I get the new lower rate or the old higher rate?

Through normal progression, provided you are on a classified job, you get the old higher rate. You are allowed to progress normally to the old rate and at that time you are given the red circle protection.

If I am at the third step in my rate range and my job goes up in value due to the new Job Evaluation System what is my new rate?

You would go to the third step in the new rate range.

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AUGUST 3, 1971, OPINION OF THE DISTRICT COURT.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

CORNING GLASS WORKS, a Corporation,

Defendant.

Civil Action No. 1967-29.

CURTIN, *District Judge.*

Appearances:

Francis V. LaRuffa, Regional Solicitor, and Isabelle R. Cappello, Assistant Counsel for Trial Litigation, United States Department of Labor, for Plaintiff.

Reed, Smith, Shaw & McClay (John G. Wayman and Scott F. Zimmerman, of Counsel) Pittsburgh, Pennsylvania, for Defendant.

Plaintiff brought this suit under the provisions of Section 17 of the Fair Labor Standards Act (29 U. S. C. § 217) to enjoin violation of Section 6(d) of the Act [29 U. S. C.

§ 206(d)], and to restrain the withholding of payment of wages found by the court to be due to defendant's employees under the Act.

After a trial, this court filed a decision on July 10, 1970,[1] ruling that the work of the Class C, Class B, and General TV inspectors was equal on all shifts within the meaning of the Act, that the payment of a lower rate to the day and afternoon shift inspectors was sex-based and illegal, and that men as well as women were damaged monetarily when, after June 1, 1966, men worked at the previously all-female day and afternoon inspector jobs at a reduced base hourly wage rate. During that trial, defendant described the sum paid to night shift workers which was in addition to the regular night shift differential paid to all night workers as a "supplemental escalating shift differential." The court ordered that restitution be paid in that amount to the employees affected from November 1, 1964 until the end of November, 1968. Injunctive relief after that date was denied because, at the time of filing that decision, the court was of the opinion that the rates of all inspectors had been equalized on all shifts by a collective bargaining agreement entered into between the defendant and the Union on January 4, 1969.[2]

On July 17, 1970, plaintiff promptly moved to amend the findings of the court on the ground that the inspection rates on all shifts had not been equalized by the collective bar-

[1] *Shultz v. Corning Glass Works*, 319 F. Supp. 1161 (W. D. N. Y. 1970).

[2] *Id.* at 1171.

gaining agreement.[3] To determine the impact of this agreement upon the wages paid to men and women inspectors on the three shifts, further extensive interrogatories and requests for admissions were filed and answered. In addition, on May 10, 1971, the court heard further testimony. The following constitutes the court's amended and supplemental findings of fact and conclusions of law.

Plaintiff and defendant are generally in agreement about the facts, but sharply dispute the conclusion which the court should draw from these facts. After considering the evidence presented, it is clear now that the court's prior decision that the January, 1969 agreement equalized the rate paid on all shifts to the inspection jobs after November, 1968 was in error.

During November and December, 1968, defendant and Local 1000 of the American Flint Glass Workers Union of North America negotiated a new collective bargaining agreement which was entered into on January 4, 1969. The agreement provided for certain retroactive wage boosts effective in November, 1968. The parties agreed that the Corning Glass Works Job Evaluation Plan, which the court relied upon in its original decision, would become effective on January 20, 1969.

Because the parties are not in dispute about the terms of the agreement or the wages which will be paid as a a result of it, it is not necessary to detail the complicated formula

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[3] Since July 10, 1970, other motions were also presented to the court. On December 2, 1970, the defendant's motion pursuant to Rule 19 of the Federal Rules of Civil Procedure to add the local and international unions as defendant parties was denied. A motion by plaintiff to include TV inspectors in the award was similarly denied.

used by the parties to set the rates, but, to understand the argument, it is important to summarize the results of the agreement.[4]

The Corning Glass Works Evaluation Plan rated the inspection jobs at issue in relation to the other jobs in the defendant's plant in a fair, non-discriminatory manner not based upon sex. It abolished the separate wage rates for day, afternoon, and night shift inspectors, increased the rate of all inspector jobs, day and night, so that the resulting wage was the same in all three shifts. Further provisions in the agreement, however, resulted in the payment of a higher rate at night to every person employed before January 20, 1969. Because of this "red circle" provision in

[4] Defendant pays the following rates to employees employed on or prior to January 20, 1969 who work as Class B and Class C inspectors:

BASE RATE RESULTING FROM AGREEMENT OF

	11/1/67 through 1/5/69	1/4/69 through 11/2/69	11/3/69 through 1/4/70	1/5/70 through 11/1/70	11/2/70 through 1/3/71	1/4/71 through Present
Class B, night shift	$2.575	$2.80	$2.92	$2.95	$3.07	$3.10
Class B, day and afternoon shifts	2.37	2.68	2.80	2.83	2.945	2.975
Differential	.205	.12	.12	.12	.125	.125
Class C, night shift	2.46	2.68	2.80	2.83	2.945	2.975
Class C, day and afternoon shifts	2.29	2.64	2.76	2.79	2.90	2.93
Differential	.17	.04	.04	.04	.045	.045

The agreement provided that an added retroactive sum payment be made for the period between November 4, 1968 and January 6, 1969. The sum was based on the rate of the employee's job on January 6, 1969. The arrangement was arbitrary and temporary. Plaintiff does not request that a recomputation be made for this period, and none is ordered by the court.

the agreement, all Class C, Class B, and General TV inspectors (until this job was discontinued in December, 1969) working on the steady night shift have continued to receive a higher base wage rate—in addition to the plantwide night shift differential—than their counterparts of comparable seniority working on the day or afternoon shifts. Men or women may work the night shift but, when they transfer to the day or afternoon shifts, they receive less pay. This "red circle" or "protected" rate will not be paid to employees hired after January 20, 1969. However, up to May 10, 1971, the date of the hearing, no one hired after January 20, 1969 had worked at one of the night inspection jobs. It will be some time before the "red circle" rate will be phased out, because there are about 500 employees currently on layoff who must be offered an inspection job before it can be offered to a new employee.

The Company claims that the "red circle" rate was needed because of a policy to protect the rate of a senior employee when his job is reclassified at a lower rate. The Company specifically referred to that section of the agreement which provides that, when "job evaluation . . . results in wage brackets lower than prevailing rates then paid for the job, it is not the intention of the Company to reduce the prevailing base rates of employees currently working on such jobs."[5] A complicated formula in the agreement put this general statement into practical effect, with the result that the night inspection job previously receiving a "supplemental escalating shift differential" now received a "red circle" or "protected" rate. The amount of the "red circle"

[5] Agreement, Corning Glass Works and American Flint Glass Workers' Union of North America, A.F.L.-C.I.O., January 4, 1969, Article XV, Section 2.

rate is smaller than the "supplemental escalating shift differential" but the result of this plan was to continue the prior practice under another name.

In its original decision, the court ruled that, from June, 1964 continuing through June 1, 1966, when women first worked on the night inspection jobs, until November, 1968, day and afternoon inspectors were entitled to be paid the "supplemental escalating shift differential."[6]

If the day and afternoon inspectors had been paid this amount before November, 1968, in January, 1969 when the new agreement was entered into, the day and afternoon inspectors would have received the benefit of the "red circle" rate in the same way that the night shift inspectors did. To state it in another fashion, if defendant had been in compliance with the Equal Pay Act on June 11, 1964, all inspectors would have been paid at the same rate in January, 1969, and all would have received the same increase when the agreement went into effect.

Defendant insists that seniority and not sex discrimination is the reason for the extra pay. Defendant alludes to the fact that both men and women have received the "red circle" protection; that, when women who have been employed before January 20, 1969 work the night shift, they receive the "protected" rate and, when men work the day shift, they work at the reduced rate.[7] Furthermore, defend-

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[6] 319 F. Supp. at 1171.

[7] There is no question that women as well as men have the opportunity to work at night. Between January 20, 1969 and December 27, 1970, 140 males and 274 females filled 524 vacancies on Inspector Class B jobs on the day and afternoon shifts in A and B Factories. Similarly, 72 males and 80 females filled 179 vacancies on the steady night shift. In the Pressware Plant, 56 males and 158 females filled 380 General TV Inspector vacancies on the day and afternoon shifts, while on the steady night shift 39 males and 46 females filled 114 vacancies.

ant contends that the formula for the "red circle" protection depended upon the payment made to inspectors immediately before the agreement was reached. Since both men and women worked as night inspectors from June, 1966, the defendant's argument is that the "red circle" rate is derived from a wage paid to women as well as men.[8]

However, the court has already found that the payment of the "supplemental escalating shift differential" during the period June, 1966 to November, 1968 was sex based and a violation of the Act. The rates paid during that period were the result of a longstanding practice to pay a lower rate to female inspectors who, for many years, worked only the day or afternoon shifts.[9] During the hearing, defendant admitted that there is an historical connection between the "red circle" rate and the prior "supplemental escalating shift differential."

It is appropriate to apply the principles growing out of the cases arising under Title VII of the Civil Rights Act of 1964 [42 U. S. C. § 2000(a)(2)] to Equal Pay Act cases, since the purpose of both Acts is to eliminate employment discrimination. *Shultz v. Wheaton Glass Co.*, 421 F. 2d 259, 266 (3d Cir.), cert. denied, 398 U.S. 905 (1970).

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[8] Defendant further argues that the January, 1969 agreement does not violate the Act because no rates were reduced, that, instead, the rates of all inspectors were increased. For example, an employee who was performing any of the three inspection jobs on the steady night shift under the wage rate in effect prior to January 4, 1969, and who transferred to the day shift under the wage rate in effect after January 4, 1969 received a wage increase, not a decrease, as a result of the agreement.

This argument is obviously without merit. To find out whether rates are discriminatory, they must be compared on the same day, not on the day before and the day after an increase.

[9] 319 F. Supp. at 1164-65.

Assuming that the formula for payment of wages after January 20, 1969 is a neutral employment practice, one to protect the rate paid to senior employees, nevertheless, if the result of this formula perpetuates past discrimination, it will not be permitted. In *Griggs v. Duke Power Co.*, 401 U. S. 424 (1971), a Title VII action, at page 430, the Supreme Court said:

> "Under the Act, practices, procedures or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices."

See also, *United States v. Bethlehem Steel Co.* (2d Cir.) decided June 21, 1971. In that action under Title VII of the Civil Rights Act, the court ordered rate retention for a group which had been discriminated against in employment opportunities. The court explained that it did so "so that the effects of past discrimination would not be perpetuated."

The court finds that, in this case, the "red circle" rate paid to night shift inspectors perpetuates the discrimination of the "supplemental escalating shift differential." The "red circle" rate is not a valid "red circle" rate under the Equal Pay Act. 29 C. F. R. § 800.146.

In order to eliminate the discriminatory rate paid to day and afternoon shift inspectors, the Company shall pay the "red circle" rate to them as well as to night shift inspectors. Defendant is restrained from withholding the payment of wages due for the period from November 1, 1964[10] until the date it equalizes the rate paid to the various inspectors.

[10] The parties agree that the statute of limitations bars relief prior to November 1, 1964. *Id.* at 1163.

The basis for computing the wages due shall be equivalent to the "supplemental escalating shift differential" and the "red circle" differential, depending upon the time period involved. The parties shall attempt to agree upon the correct amount due each employee affected by this decision. If they cannot agree upon the amount of the judgment within a period of sixty days, then the plaintiff is directed to move promptly, on notice, for an accounting by a Master to be appointed by the court. At the same time, the parties are directed to attempt to agree upon the manner of distribution of the award to the employees.

In the court's original decision, the plaintiff's application for an injunction, pursuant to Section 17 of the Fair Labor Standards Act, restraining future violations of the Act was denied with leave to renew. The court is now satisfied that the plaintiff is entitled to this relief. The defendant has been in violation since June 11, 1964. Since January, 1969 when the Company entered into the new agreement, it continued to pay the past discriminatory rate. The Company admits that a similar plan for the payment of inspectors was in force in at least two other plants and, in at least ten plants of the twenty-six, up to May, 1965 it continued to have separate male and female rate schedules. Furthermore, the present collective bargaining agreement at the Corning plant expires on January 20, 1972. Whatever new agreement is entered into, it is important that the negotiations be carried out with the understanding that future violations of the Act may be the subject of contempt proceedings.

Under these circumstances, an injunction should issue for the purpose of the Act is to "correct a continuing offense against the public interest," not simply "to collect a debt

owed by an employer to an employee." *Wirtz v. Jones,* 340 F. 2d 901, 904 (5th Cir. 1965). The injunction merely directs what the employer is required to do by law. It places no additional burden on the Company, but it relieves the heavy burden placed upon the Department of Labor to conduct a widespread investigation of defendant's operation. See *Wirtz v. Harper Buffing Co.,* 280 F. Supp. 376, 382 (D. Conn. 1968), aff'd. without opinion, 2d Cir. September 17, 1968, Dkt. No. 32167; *Walling v. Brooklyn Braid Co.,* 152 F. 2d 938 (2d Cir. 1945); and *Hodgson v. Ricky Fashion, Inc.,* 434 F. 2d 1261 (5th Cir. 1970).

In addition, to carry out the purpose of the Act, the injunction issued must be company-wide. Since the discriminatory practice was allowed to continue at the Corning plant, the court believes that, in other plants not under the pressure of investigation or litigation, the Company would not strenuously endeavor to correct similar discriminatory practices. *Wirtz v. Beneficial Finance Co. of Wisconsin,* 346 F. 2d 340 (7th Cir. 1965). The court directs that the defendant Company at Corning and at all branch plants, except the branch plant at Wellsboro, Pennsylvania where an action has been filed and a trial is likely in the near future, its officers, employees, and those in active concert with them are enjoined from future violations of the Act.

Interest shall be paid on the amounts withheld at the rate of 6% from the median date of employment. In *Hodgson v. American Can Co.-Dixie Products,* 440 F. 2d 916, 922 (8th Cir. 1971), the court explained the reason for the award of interest:

> ". . . In the absence of an unequivocal prohibition of interest, and where the statute imposes a money

obligation, the power of the court to award interest is dependent on an appraisal of the congressional purpose of imposing the obligation and on the relative equities of the parties. Rodgers v. United States, 332 U. S. 371, 68 S. Ct. 5, 92 L. Ed. 3 (1947). Clearly the award of back wages under the Fair Labor Standards Act is remedial in nature. 29 U. S. C. § 202(b). . . . The purpose of the award is to compensate the employees for the loss sustained because of the wrongful withholding of wages. While the good faith of the employer is one of many factors to be considered, '[t]o make such employees whole, the provision for the payment of interest for the time the back pay was wrongfully withheld from them is only equitable.' . . .

From the inception of the discrimination, American Can was unjustly enriched and the female employees were damaged. During the entire period American Can has had the use of the money, and therefore equity and justice requires payment by way of interest for its use. The interest should be allowed from the dates of the underpayment. . . ."

Similar considerations require the awarding of interest in this case.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: August 3, 1971.

JUDGMENT OF THE DISTRICT COURT.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

CORNING GLASS WORKS, a Corporation,

Defendant.

Civil Action No. 1967-29.

This cause having come on to be tried in this Court and the testimony, exhibits and evidence adduced by the parties having been considered, and the cause having been argued by counsel, and the Court, after due deliberation having filed on July 10, 1970, an order dated July 10, 1970, and having filed on August 3, 1971, a decision and order dated August 3, 1971, which orders and decision constituted the Court's findings of fact and conclusion of law, it is now; therefore, upon motion of the attorneys for the Plaintiff and for cause shown:

ORDERED, ADJUDGED AND DECREED that Defendant, Corning Glass Works, at Corning, New York, and at all branch plants, except the branch plant at Wellsboro, Pennsylvania, its officers, agents, servants, employees and

those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be and they hereby are, permanently enjoined and restrained from violating the provisions of sections 15(a)(1) and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (29 U. S. C. 201-219), hereinafter called the Act, in any of the following manners:

(1) The defendant shall not, contrary to section 6(d)(1) of the Act, discriminate on the basis of sex between employees employed within an establishment by paying wages to employees in such establishment at a rate less than the rate at which it pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions:

(2) The defendant shall not, contrary to section 6(d)(1) of the Act, reduce the wage rate of any employee in order to comply with the provisions of section 6(d)(1) of the Act:

(3) The defendant shall not, contrary to section 15(a)(1) of the Act, transports, offer for transportation, ship, deliver, or sell in commerce, as defined by the Act, or ship, deliver or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any of its employees has hereafter been employed in violation of section 6(d)(1) of the Act:

(4) Defendants shall cease to withhold any amounts owing to any employee which have been withheld in violation of section 6(d)(1) of the Act:

IT IS FURTHER ORDERED that:

(a) Defendant shall increase the base hourly wage rates of employees hired prior to January 20, 1969, working in A Factory, B Factory and Pressware Plant, on the jobs of Inspector Class C and Inspector Class B on other than the steady night shift to the same base hourly wage rate including the so-called red circle differential paid to employees of like seniority for the performance of those jobs on the steady night shift; and

(b) Exhibit marked "A", consisting of one computer printout volume of 132 pages, comprises computations submitted by defendant for period from November 1, 1964, through June 27, 1971, showing gross amount of $536,581.08 due to 946 employees ($526,825.09 back wages to 677 female employees, $9,755.99 back wages to 269 male employees), be and the same hereby is made a part of this judgment; and

(c) Defendant shall determine from defendant's records the amount owing employees from June 28, 1971, to the date that the base hourly wage rates of the jobs are increased in accordance with part (a) above, such supplemental calculation to be performed on the same basis and in the same manner as the calculation of back wages set forth in (b) above, with interest at six per centum per annum to the date that the base hourly wage rates of the jobs are increased as set forth herein. Such further determination of amounts owing shall be approved by counsel for the plaintiff and be subject to the supervision of the court and shall be incorporated in this judgment by appropriate supplemental order; and

(d) The net amounts owing as set forth in this judgment shall be paid no later than ninety days after the filing of this judgment, subject to such stay of payment pending the resolution of an appeal as may be agreed upon or granted, and any net sums which within one year after the filing of this judgment have not been distributed to employees or to their personal representatives because of inability of either defendant or plaintiff to locate the proper persons, or because of such persons' refusal to accept such sums, shall be deposited with the Clerk of this Court who shall forthwith deposit such money with the Treasurer of the United States pursuant to 28 U. S. C. 2041 (1964); and

(e) Taxing of costs against defendant.

Dated: This 30th day of November, 1971.

JOHN T. CURTIN,
United States District Judge.

OPINION OF THE COURT OF APPEALS.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 252, 349—September Term, 1972.

Argued January 4, 1973. Decided February 2, 1973.

Docket Nos. 72-1229, 72-1230.

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Appellee,

v.

CORNING GLASS WORKS, a Corporation,

Appellant.

Before FRIENDLY, *Chief Judge,* KAUFMAN, *Circuit Judge,* and HOLDEN,* *District Judge.*

Appeal from a judgment of the District Court for the Western District of New York, John T. Curtin, *Judge,* 319 F. Supp. 1161, 330 F. Supp. 46, in an action by the Secretary of Labor under the equal pay provisions of the Fair Labor Standards Act, awarding back pay and enjoining future violations. Modified and affirmed.

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* Chief Judge of the District Court for the District of Vermont, sitting by designation.

Carin Ann Clauss, Esq., Associate Solicitor (Richard F. Schubert, Esq., Solicitor, of Labor, Francis V. LaRuffa, Esq., Regional Solicitor, Donald S. Shire, Esq., Helen W. Judd, Esq., Isabelle R. Cappello, Esq., and Sylvia S. Ellison, Esq., Attorneys, of Counsel), for Appellee.

Scott F. Zimmerman, Esq., Pittsburgh, Pennsylvania (Reed, Smith, Shaw & McClay, John G. Wayman, Esq., and Walter P. DeForest, Esq., Pittsburgh, Pennsylvania, of Counsel), for Appellant.

FRIENDLY, *Chief Judge:*

This appeal marks this Court's first encounter with the Equal Pay Act of 1963, 29 U. S. C. § 206(d), one of the many beneficent remedial statutes enacted during the last decade which create new tasks for the federal courts. The burden is increased, perhaps needlessly, because, as is the case with other provisions of the Fair Labor Standards Act of which it forms a part, the Equal Pay Act has no provision for administrative fact-finding.

The controlling statute, 29 U. S. C. § 206(d)(1), of seeming simplicity, reads as follows:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed

under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

I.

Since the parties broadly accept the factual findings of the district court, a brief summary will suffice.

The controversy concerns the wages paid by Corning Glass Works ("Corning") to Class B, Class C, and General TV inspectors,[1] in its A Factory, B & C Factory, and Pressware Plant at Corning, New York. Prior to 1925, Corning operated its plants only during the day, and found it unnecessary or undesirable to have a night shift. Between 1925 and 1930, however, the introduction of automatic production equipment made it necessary to institute a night inspection shift. Although, as the district judge found, *Shultz v. Corning Glass Works*, 319 F. Supp. 1161, 1170 (W. D. N. Y. 1970), previously "women had filled most, if not all, of the inspection jobs on the day and afternoon

[1] Although the Secretary of Labor previously claimed that the wages paid to a fourth class of employees, TV Inspectors, also violated the Equal Pay Act, the district court seemingly held that the Secretary had not met his burden of proof that the work done by men and women on these jobs was equal and did not include these jobs in its back pay award. See *Shultz v. Corning Glass Works*, 319 F. Supp. 1161, 1168, 1171 (W.D.N.Y. 1970). The Secretary has not appealed this aspect of the district court's order.

shifts," New York law[2] then prohibited the employment of women between 10:00 P. M. and 6:00 A. M., and thus Corning had to recruit male employees for a steady night shift. They demanded and received wages comparable to what they were earning on other, often more demanding jobs in the plant, which were approximately twice those paid to the female inspectors. The base rate for the inspectors on the night shift was 53 cents per hour, as against 24 to 28 cents per hour for the female inspectors on the day shifts.

Thus a situation was created where the night inspection shift was all male, the day shift virtually all female, and the males received wages significantly higher than the females. This state of affairs persisted until the effective date of the Equal Pay Act—and beyond it—except for one brief period when, because of labor shortages during World War II, New York allowed women to work at night; women employed by Corning on the night shift during that period received the same wages as the men when they performed the same work. In 1944 the Corning, New York plants were organized by the American Flint Glass Workers Union and a collective bargaining agreement was negotiated which provided for the company's first plant-wide night shift differential.[3] But this change in Corning's wage structure did not eliminate the higher base wage paid to male night

[2] 1927 N.Y. Laws, ch. 453; 1930 N.Y. Laws, ch. 868.

[3] The record does not reveal whether, apart from the inspectors, Corning had paid more for night work before the institution of the plant-wide differential in the 1944 agreement. Corning suggested that there might have been other jobs performed by women during the day for which the company had to pay a higher wage to get men to perform at night. It seems relatively clear, however, that if a job had been performed on the day shift by men, men on the night shift would receive the same wage.

inspectors since, in the case of the inspectors, the shift differential was superimposed upon the existing difference in wage scales. Similarly, although in 1953 New York changed its law to permit females over the age of 21 to work after midnight in factories operating multiple shifts where the Industrial Commissioner found transportation and safety conditions to be satisfactory and granted approval,[4] the record does not reveal any application by Corning for such approval prior to 1966.

The Equal Pay Act became effective with respect to Corning's Corning, New York plants on June 11, 1964.[5] Since Corning had previously maintained separate "male" and "female" rate schedules plant-wide, with the latter materially lower, the Act clearly called for action on its part. Corning therefore merged the separate schedules into one. However, so far as concerned the inspectors, this was a matter of theory only, since the day shift inspectors were assigned to lower wage groups, see 319 F. Supp. at 1165-66. Thus, as the district court found, 319 F. Supp. at 1166, "the merger continued the historical difference in base hourly rates of the men and women inspectors working the three shifts."

Corning's first significant step toward eliminating the differential wage rates for male and female inspectors took place on June 1, 1966, when it opened the inspection jobs on the night shift to women, presumably with the approval of the State Industrial Commissioner. At this time Corning

[4] 1953 N.Y. Laws, ch. 708, *amending* N.Y. Labor Law § 172, *now* N.Y. Labor Law § 173(3)(a)(1) (McKinney 1965).

[5] It was stipulated that the statute of limitations barred all claims arising prior to November 1, 1964 and that any back pay awards in this action should run only from that date.

consolidated its theretofore separate male and female seniority lists, and women became eligible to bid for the higher paid night inspection jobs when vacancies occurred. It is undisputed that a considerable number of women took advantage of this opportunity; turnover in the night inspection jobs was substantial and over half the vacancies were taken by women. Still, the process required some time since women could not exercise their seniority to "bump" a less senior male night inspector.[6]

The last significant event was Corning's negotiation of a new collective bargaining agreement with the Flint Glass Workers Union, effective January 20, 1969. This abolished the separate base wage rates of day and night shift inspectors and increased the rate for all inspectors, so that the resulting base wage was the same for all three shifts and exceeded the wage rates on the steady night shift previously in effect. If the agreement had stopped at that point, there could be no substantial claim of further violation of the Equal Pay Act. However, the agreement provided for a higher "red circle" basic rate to every person employed before January 20, 1969, when working as an inspector on the night shift. At the time of the last hearing in the district court, over two years after the new agreement went into effect, all the night inspectors were being paid at the "red circle" rate; unless Corning changes its system, this is likely to continue for some time since at the date of the hearing over 500 laid-off inspectors had to be offered reemployment before any new inspectors could be hired.

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[6] In 1966 only 4 of 15 women requesting transfer to the night shift received this. The situation later improved so that 39 out of 61 requests were honored in 1967, and 42 out of 52 through November 7 in 1968

The district court held that Corning had been in continuing violation of the Equal Pay Act; directed it to pay the night rate to all inspectors from November 1, 1964, see note 5 *supra*, to January 20, 1969, and the "red circle" rate thereafter to all inspectors until true equalization was effected; awarded interest at the rate of 6% per annum on the amounts withheld; and issued an injunction against future violations of the Act of any kind with respect to all categories of employees at all plants except the branch plant at Wellsboro, Pennsylvania.[7] Corning claims that it was never in violation of the Equal Pay Act; that if it was, any violation ended on June 1, 1966, when women became eligible to work on the night shift, or, at latest, on January 20, 1969, when the differences in basic wage rates were abolished; and that the broad injunction was unjustified. Although the issues are not free from doubt, we reject all contentions save the last.

II.

The parties are in agreement on the general approach we should follow. The initial question is whether the inspection jobs on the day and night shifts constituted "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." The Secretary has the burden on this, *Shultz v. American Can Co.*, 424 F.2d 356, 360 (8 Cir. 1970); *Hodgson v. Brookhaven Gen'l Hosp.*, 436 F.2d 719, 722

[7] The reason for the exception was that an action with respect to the Wellsboro plant, on facts similar to those in the instant case, was then pending in the District Court for the Middle District of Pennsylvania. This has since been decided in favor of Corning, *Hodgson v. Corning Glass Works*, 341 F. Supp. 18 (1972), and is now on appeal to the Third Circuit

(5 Cir. 1970), and, if he has not sustained it, the complaint must be dismissed even if the wage differentials were unreasonably large in comparison with the actual differences in skill, effort, responsibility, or working conditions, and were based on discriminatory motivation; Congress did not intend to put either the Secretary or the courts in the business of evaluating jobs and determining what constituted a proper differential for unequal work. See 109 Cong. Rec. 9197-98, 9209 (1963); *Hodgson v. Miller Brewing Co.*, 457 F.2d 221, 227 (7 Cir. 1972). The Secretary also has the burden of establishing a prima facie case that the wage differentials represent "discriminat[ion] . . . on the basis of sex." *Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 266 (3 Cir.), *cert. denied*, 398 U. S. 905 (1970). Once the Secretary has sustained these burdens, the employer can escape liability only by bringing itself within one of the four exceptions, the one that is particularly relevant here being the general escape clause, "a differential based on any other factor other than sex." On this the employer has the burden. *Shultz v. Wheaton Glass Co., supra*, 421 F.2d at 266; *Shultz v. American Can Co., supra*, 424 F.2d at 362.

Corning's most basic contention—one which, if sustained, would immediately end the case—is that work on a steady night shift is not performed under "working conditions" similar to work on day or afternoon shifts. To those uninitiated in the language of industrial relations, that would indeed seem to be true, and the District Court for the Middle District of Pennsylvania has so held, see note 7 *supra*. But, as said in one of Mr. Justice Frankfurter's early opinions, "[t]he recognized practices of an industry give life to the dead words of a statute dealing with it." *United States v. Maher*, 307 U. S. 148, 155 (1939). Statutory language ad-

dressed to experts must be read in the way the experts would understand it. See *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 326-27 (1951) (Frankfurter, J., dissenting).

The legislative history of the Equal Pay Act supports the construction that the time at which work is performed was not regarded as a "working condition" but rather as a proper subject for "a differential based on any other factor other than sex." The equal pay bills, H.R. 3861, 88th Cong., 1st Sess. (1963); S.910, 88th Cong., 1st Sess. (1963), as originally introduced in Congress, would have required equal pay for "equal work on jobs the performance of which requires equal skills." Ezra G. Hester, then Corning's Director of Industrial Relations Research, testified before both House and Senate Committees in opposition to this formulation. He pointed out that most of industry was by then using formal job evaluation systems in order to establish equitable wage structures in their plants, and that most of these job classification systems considered three factors in addition to "skill," to wit, effort, responsibility, and working conditions. As an example, he cited his own company's plan, which was introduced into the record. Under "working conditions" the plan and the accompanying job evaluation sheets listed two factors: "surroundings" (requiring evaluation of exposure to elements, intensity, and frequency) and "hazards" (requiring evaluation of frequency of exposure to hazard, frequency of injury, and seriousness of injury); nothing was said about time of day worked or differences in shift.[8] Mr. Hester

[8] Edward W. Noble, Corning's Manager of Job Evaluation, testifying in this case, gave a similar description of Corning's job evaluation plan and said specifically that the time of day was not con-

(Footnote continued on following page)

testified that "Other companies use similar job evaluation sheets," and urged the committees to amend the proposed legislation to conform to these industry practices. See *Hearings on H.R. 3861 and Related Bills Before the Special Subcommittee on Labor of the House Committee on Education and Labor,* 88th Cong., 1st Sess. 232-40 (1963); *Hearings on S. 882 and S. 910 Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare,* 88th Cong., 1st Sess. 96-104 (1963).

In response to this, the bill was rewritten in committee and placed in its present form. Five House Committee members thus explained the change, H.R. Rep. No. 309, 88th Cong., 1st Sess. 8 (1963):

> The concept of equal pay for jobs demanding equal skill has been expanded to require equal effort, responsibility, and similar working conditions as well. These factors are the core of all job classification systems and the basis for legitimate differentials in pay.

Earlier in the Report, at p. 3, the Committee had indicated where it thought shift differentials would fit into the statute:

> Three specific exceptions and one broad general exception are also listed. . . . As it is impossible to list each and every exception, the broad general exclusion ["differentials based on any other factor other

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(Footnote continued from preceding page)
sidered to be a "working condition." See also the Dictionary of Occupational Titles (3d ed. 1965), published by the Manpower Administration of the Department of Labor. Volume II: Occupational Classification, at 656, defines working conditions as "the physical surroundings of a worker in a specific job," and gives the following examples: inside work v. outside work, exposure to heat, cold, wetness, humidity, noise, vibration, hazards (risk of bodily injury), fumes, odors, toxic conditions, dust and poor ventilation. It does not mention night work.

> than sex"] has also been included. Thus, among other things, shift differentials, restrictions on or differences based on time of day worked, hours of work, lifting or moving heavy objects, differences based on experience, training, or ability would also be excluded.

This persuasive explanation of how the bill took shape, and the evident understanding of the Committee, consistent with this explanation, of the structure of the amended bill, outweigh the point, strongly pressed by Corning, that Representative Goodell, who introduced the bill and had a hand in redrafting it, remarked during the course of an explanation of its provisions that "hours of work, difference in shift . . . would logically fall within the working condition factor." 109 Cong. Rec. 9209 (1963). Corning also relies upon a statement by Representative Thompson, chairman of the Subcommittee:

> Thus, among other things, shift differentials, restrictions on or differences based on time of day worked, hours of work, lifting or moving heavy objects, differences based on experience, training, or ability would also be exempted under this act. .

109 Cong. Rec. 9196. But this does not assist Corning; indeed, since it is apparent that Representative Thompson was only paraphrasing his Committee's Report, this rather supports the construction that time of day differentials were covered under the catch-all exception rather than by the term "working conditions."

Administrative interpretation by the Wage and Hour Administrator, which the Supreme Court has held entitled to deference, *Skidmore v. Swift & Co.*, 323 U. S. 134, 140

(1944), further indicates that shift differentials are to be considered a legitimate exception to the Act rather than to reflect a difference in working conditions which would make the statute inapplicable. 29 C. F. R. §§ 800.100 *et seq.* set out the Administrator's interpretations of each of the provisions of the Equal Pay Act and each of the terms used in the Act. Under "similar working conditions," § 800.132 says that "[g]enerally, employees performing jobs requiring equal skill, effort, and responsibility are likely to be performing them under similar working conditions," which in itself would seem to indicate that shift differences are not considered different working conditions since this is such a common situation. The only examples given of different working conditions are the salesman who works in a store as compared with the salesman who sells door to door, or one who does repair work in a shop as compared with one who does repair work in customers' homes. In contrast, the Administrator recognizes the legitimacy of night shift differentials in § 800.145, under "Exceptions to Equal Pay Standard."

Finally, while the case law is not conclusive, the decisions, other than the recent one between the same parties in the Middle District of Pennsylvania, see note 7 *supra*, are more favorable to the Secretary's position on this issue than to Corning's. See *Shultz v. American Can Co., supra*, 424 F. 2d 356; *Hodgson v. Miller Brewing Co., supra*, 457 F. 2d at 224-25 & n. 8; *Wirtz v. Basic Inc.*, 256 F. Supp. 786 (D. Nev. 1966).

Corning's impressive evidence that night work not only is less attractive than day work but often causes physical and emotional problems thus does not carry the day. While

the statute indeed permits all this to be taken into account, it is relevant under the catch-all exception, with its requirement that the employer establish that the differential was based on a factor other than sex, rather than making night work a different "working condition" and eliminating application of the statute altogether. Thus the question is whether the higher rate paid by Corning for night inspection work, until 1966 performed solely by males, was in fact intended as compensation for night work or constituted an added payment based in part upon sex.

A number of facts support the district court's conclusion that the latter was the situation here. As the history set out above indicates, the higher night rate was in large part the product of the generally higher wage level of male workers and the need to compensate them for performing what were regarded as demeaning tasks. The wage differential has never been regarded as compensation for night work. There was no evidence that any other night employees received higher pay than corresponding day workers until the plant-wide night differential was superimposed on the basic rates in 1944;[9] since that time, it is apparent that the shift differential has been thought to compensate, fairly and adequately, employees other than inspectors for night work. Indeed, Corning had separate male and female salary schedules until June 11, 1964.

The plain fact is that the differentials here at issue arose because men would not work at the low rates paid the women day-time inspectors to perform what the men

[9] The first night shift differential was only five cents per hour; the excess in the base rates paid the men working as inspectors on the night shift over that paid the women on the day shift was at that time on the order of fourteen cents per hour.

called "female work." This is the very condition at which the Equal Pay Act was aimed. A higher rate paid to men for performing low paid "female work" is not transformed into a permissible "differential based on any other factor other than sex" simply because the men work at night. We might, of course, have a different problem if New York had continued to prohibit the employment of women at night, but the prohibition had ended a decade before enactment of the Equal Pay Act, and there is nothing to indicate that Corning would have had any more difficulty in obtaining the Industrial Commissioner's approval in 1964 than it did in 1966.

The only other basis advanced by Corning to challenge the district court's finding that it initially violated the Act is its contention that the day and night shift inspection jobs were not "equal work . . . the performance of which requires equal skill, effort, and responsibility" because some of the men on the night shift had to do their own "utility work," involving a certain amount of packing and lifting the inspected articles and cleaning up around the inspection station, which, on the day shifts, was primarily performed by male helpers especially hired for such work. It is now well settled, however, that the jobs under analysis need not be identical in every respect before the Equal Pay Act is applicable; inconsequential differences can be disregarded as long as the jobs are "substantially equal." *Shultz v. Wheaton Glass Co., supra,* 421 F. 2d at 265; *Shultz v. American Can Co., supra,* 424 F. 2d at 360; *Hodgson v. Fairmont Supply Co.,* 454 F. 2d 490, 493 (4 Cir. 1972). Applying this standard, the district court rejected Corning's contention primarily on the ground that Corn-

ing's job evaluation plan "considered the utility work of so little consequence that these tasks were not included in the job descriptions of any of the inspectors."[10] 319 F. Supp. at 1169. As the court below noted, *id.*, these job descriptions, prepared through observation of actual job performance in 1963 and 1964, are particularly significant here since they demonstrate Corning's own view of the content of the jobs before its perspective was changed by the filing of this litigation. Other evidence also showed the inconsequentiality of this factor. Although some male inspectors on the night shift had at times been given the assistance of utility workers, Corning has always continued to pay all night inspectors at the same wage. Indeed, Corning's Manager of Job Evaluation, Edward Noble, conceded that "there is very little difference from shift to shift" in the performance of these inspection jobs. There is ample support for the district court's conclusion that the relevant jobs entail "substantially equal" work. Cf. *Shultz v. American Can Co., supra,* 424 F. 2d at 360-61.

[10] Corning objects to the use made by the district court of the descriptions of the inspection jobs prepared for the Corning Glass Works Job Evaluation Plan (CGW Plan) and, to a lesser degree, of those contained in an earlier plan prepared for Corning by Stevenson, Jordan & Harrison (SJ&H Plan). Insofar as the objection rests on the hearsay rule, it is answered not only by the business records statute, 28 U.S.C. § 1732(a), but by the status of these plans as admissions (in the case of the SJ&H plan, an adoptive admission). Insofar as the objection rests on the point that application of the Equal Pay Act hinges on actual job content rather than the employer's evaluation, see *Hodgson v. Brookhaven Gen'l Hosp., supra,* 436 F.2d at 724, the evaluation is nonetheless evidence, and often exceedingly good evidence, of the actuality; if either party seeks to show the contrary, it is open to him to do so. The job descriptions, together with the supporting testimony of Edward Noble, were sufficient to sustain the Secretary's burden of proof on job equality.

We thus approve the district court's holding that when the Equal Pay Act took effect, Corning was violating it by paying higher base wages to the male night inspectors, and proceed to consider whether the violation has since been cured.

III.

Corning first contends that it cured its violation by opening the night shift to women in 1966 on what was clearly more than a token basis, but see note 6 *supra*. Although this argument seems persuasive at first blush, it must be rejected. Congress was quite specific how the injustice of unequal pay for equal work must be eradicated. Recognizing the weaker bargaining position of many women and believing that discrimination in wage rates represented unfair employer exploitation of this source of cheap labor, see, *e.g., Hearings on H.R. 3861, supra*, at 8 (statement of Secretary of Labor Wirtz), Congress declared that wage discrimination on the basis of sex "depresses wages and living standards" of the many families dependent on the income of women. Equal Pay Act § 2, 77 Stat. 56. Consequently it provided that an employer paying a wage differential violative of the Act should cure the violation by raising the wage rates of the women. This intention, clearly enough expressed in the proviso of 29 U. S. C. § 206(d)(1), that "an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee," received express emphasis from the legislators. "The only way a violation could be remedied under the bill . . . is for the lower wages to be raised to the higher." *Hearings on H. R. 3861, supra*, at

65 (statement of Representative Griffin); see also H. R. Rep. No. 309, *supra*, at 3 ("The lower wage rate must be increased to the level of the higher.")

In light of this apparent congressional understanding, we cannot hold that Corning, by allowing some—or even many—women to move into the higher paid night jobs, achieved full compliance with the Act. Corning's action still left the inspectors on the day shift—virtually all women—earning a lower base wage than the night shift inspectors because of a differential initially based on sex and still not justified by any other consideration; in effect, Corning was still taking advantage of the availability of female labor to fill its day shift at a differentially lower wage rate not justified by any factor other than sex. We thus join with every other court of appeals which has considered the issue in holding that merely opening the higher paid jobs to women as vacancies arise is not sufficient to comply with the requirements of the Equal Pay Act. *Shultz v. American Can Co.*, *supra*, 424 F. 2d at 359; *Hodgson v. Square D Co.*, 459 F. 2d 805, 808-09 (6 Cir. 1972), *cert. denied*, 41 U. S. L. W. 3230 (Oct. 24, 1972); see also *Hodgson v. Miller Brewing Co.*, *supra*, 457 F. 2d at 226-27.

We come finally to Corning's contention that any violation was cured by the new collective bargaining agreement which became effective January 20, 1969. As previously indicated, this would clearly have been so if Corning had simply established a uniform day and night shift rate at least as high as the previous night shift rate, either with or without a plant-wide night differential. The problem stems from the "red circle" rate whereby any employee

hired before January 20, 1969, receives a basic rate for night shift work some four to twelve cents per hour higher than for the day and afternoon shifts. Corning's contention that this is a differential based on seniority, another permitted exception, is belied by the fact that it is paid only for work on the night shift. We cannot disagree with the district judge, *Hodgson v. Corning Glass Works*, 330 F. Supp. 46, 50 (W. D. N. Y. 1971), that, on the facts of this case, "the 'red circle' rate paid to night shift inspectors perpetuates the discrimination of the 'supplemental escalating shift differential'"—the euphemism Corning has coined for the excess base wage rates paid to inspectors on the night shift.

We do not minimize the problems faced by Corning in changing policies originally resulting from New York law so that it will comply with the Equal Pay Act. It may well be that the wages originally paid the male inspectors on the steady night shift were more than the jobs were worth and were paid only because Corning could not get the men to do this work for less than they were receiving for labor requiring more skill or effort. With the benefit of hindsight, Corning could have avoided this suit—and its back pay liability—by opening the night shift to women once the New York law was changed in 1953, when there was no legal obstacle to reducing the night rate, or, perhaps more realistically in light of union pressures, holding the night rate and gradually increasing the day rate until the two met, as was finally done, save for the "red circle" provision, in 1969. Even with the passage of the Act, however, Corning had ample time to restructure its wage rates to comply with the Act's provisions, for Congress postponed its effectiveness for one year, see Equal Pay Act

§ 4, 77 Stat. 57, in order to avoid the "severe hardship" immediate compliance might impose on employers. See S. Rep. No. 176, 88th Cong., 1st Sess. 5 (1963). But it did not do so, and upon the effectiveness of the Act, many of Corning's options were foreclosed by the proviso previously discussed. If the result here seems harsh in view of the efforts Corning has been making since 1966, the harshness is that which may be inevitable when a legislature demands a drastic change in discriminatory practices that had too long been accepted.

IV.

Not content with requiring the payment of back wages which, with interest, will exceed $600,000,[11] the district court issued a sweeping injunction, broadly incorporating the words of the Act and applicable to all Corning plants (save that in Wellsboro, Pennsylvania), which we quote in the margin.[12]

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[11] Corning also challenges the district court's calculation of the amount of back pay due. We see no merit in this contention.

[12] (1) The defendant shall not, contrary to section 6(d) (1) of the Act, discriminate on the basis of sex between employees employed within an establishment by paying wages to employees in such establishment at a rate less than the rate at which it pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions:

(2) The defendant shall not, contrary to section 6(d) (1) of the Act, reduce the wage rate of any employee in order to comply with the provisions of section 6(d) (1) of the Act:

(3) The defendant shall not, contrary to section 15(a) (1) of the Act, transport, offer for transportation, ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any of its employees has hereafter been employed in violation of section 6(d) (1) of the Act:

(Footnote continued on following page)

We see no justification for this. Corning had been found to have violated the Equal Pay Act only with respect to one class of employee at its three plants in Corning, New York. As indicated, the violations were largely a result of the New York law which until 1953 had prohibited the employment of women at night. The Secretary's case was by no means impregnable, and Corning had been endeavoring since 1966—sincerely, if ineffectively—to bring itself into compliance. There was no evidence of widespread violations of the Act, either at the Corning plants or its 26 branch plants nationwide. The evidence rather was that the only other cases where a similar violation might exist were the inspection jobs in the plant at Wellsboro, Pennsylvania, which was excepted from the injunction because of a pending suit by the Secretary, and in a plant at Central Falls, Rhode Island, as to which the Secretary had also already instituted suit. Yet so broad an injunction put Corning under threat of contempt for any alleged violation of the Equal Pay Act in respect of any category of employee in all but one of Corning's many plants.

We agree with the point made by the Eighth Circuit, in another Equal Pay Act case, *Hodgson v. American Can Co.*, 440 F. 2d 916, 921 (1972), that absent a showing of a policy of discrimination which extends beyond the plants at issue here, there is no basis for a nationwide injunction. Moreover, the Supreme Court has held that

> the mere fact that a court has found that a defendant has committed an act in violation of a statute does not

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(Footnote continued from preceding page)

(4) Defendants shall cease to withhold any amounts owing to any employee which have been withheld in violation of section 6(d) (1) of the Act.

> justify an injunction broadly to obey the statute and thus to subject the defendant to contempt proceedings if he should at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged.

NLRB v. Express Publishing Co., 312 U. S. 426, 435-36 (1941). Since there is no showing here of the "proclivity for unlawful conduct" or "record of continuing and persistent violations of the Act" found to justify such an injunction in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 192 (1949), the injunction must be narrowed accordingly. While *Hodgson v. First Fed. Savings & Loan Ass'n.*, 455 F. 2d 818, 825-27 (5 Cir. 1972), relied on by the Secretary, may have been correctly decided on its own facts, we cannot subscribe, in the light of *Express Publishing* and our own views, to all that was there said.

The injunction is modified by eliminating paragraph (3) and limiting the remaining paragraphs to inspectors at the three Corning plants. As so modified, the judgment is affirmed. No costs.

Hodgson v. Corning Glass Works, a Corporation
I concur 1/24/73
I. R. K.

Hodgson v. Corning Glass Works, a Corporation
I concur 2/2/73
JAMES S. HOLDEN

[Filed, February 2, 1973]

JUDGMENT OF THE COURT OF APPEALS.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the second day of February one thousand nine hundred and seventy-three.

Present: Hon. Henry J. Friendly, *Chief Judge.*
Hon. Irving R. Kaufman, *Circuit Judge.*
Hon. James S. Holden, *District Judge.*

JAMES D. HODGSON, Secretary of Labor, United States, Department of Labor,
Plaintiff-Appellee,

v.

CORNING GLASS WORKS, a corporation,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment and orders of said District Court be and they hereby are

modified and as so modified said judgment and orders be and they hereby are affirmed without costs in accordance with the opinion of this court.

A. DANIEL FUSARO,
Clerk,

BY: VINCENT A. CARLIN,
Chief Deputy Clerk.

[Filed, February 2, 1973]

ORDER ALLOWING CERTIORARI.

SUPREME COURT OF THE UNITED STATES

No. 73-29

CORNING GLASS WORKS,

Petitioner,

v.

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor

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ORDER ALLOWING CERTIORARI. Filed December 17, 1973. The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with No. 73-695 and a total of one hour is allotted for oral argument.